TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 134

THE SKANEATELES WATER WORKS COMPANY, PLAINTIFF IN ERROR,

vs.

THE VILLAGE OF SKANEATELES, E. NORMAN LESLIE, AS PRESIDENT OF SAID VILLAGE, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED AUGUST 13, 1900.

(17,870.)

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a Court of Appeals, State of New York.

THE SKANEATELES WATER WORKS CO., Appellant,
against
THE VILLAGE OF SKANEATELES, E. NORMAN LESLIE, as President of said Village; John Connell, Edwin Whiting, Edward Dent, as Trustee of said Village, and Lemuel D. Hall, Edward Eckett, James A. Root, and John L. Shultz, as Water Commissioners of the Village of Skaneateles, Respondents.

Case and Exceptions.

George Barrow, attorney for appellant.
Charles A. Hawley, of counsel.
M. F. Dillon, attorney for respondents.
Wm. G. Tracy, of counsel.

1 Supreme Court, Onondaga County.

THE SKANEATELES WATER WORKS COMPANY, Plaintiff,
against
THE VILLAGE OF SKANEATELES, E. NORMAN LESLIE, as President of said Village; John Connell, Edwin Whiting, Edward Dent, as Trustees of said Village, and Lemuel D. Hall, Edward Eckett, James A. Root, and John L. Shultz, as Water Commissioners of the Village of Skaneateles, Defendants.

Case and Exceptions.

Statement.

2 The above-entitled action was begun by the service of the summons and complaint Oct. 29, 1896; and the answer therein was served on or about Nov. 20, 1896.

There has been no change of parties.

The action was referred to Hon. John W. Hogan of Syracuse as sole referee, to hear, try and determine. The hearings before the referee began Dec. 29, 1896, and were continued from time to time, the oath of the referee having been waived in open court.

The following case contains all of the evidence and other proceedings upon the trial of the action material to the questions to be raised.

Upon the trial before the referee, Mr. Barrow, for the plaintiff, offered in evidence a certificate signed by the authorities of the village of Skaneateles pursuant to chapter 213 of the Laws of 1881, dated July 5, 1887, filed in the clerk's office of Onondaga county July 12, 1887, which is hereto annexed marked Ex. 1.

He then offered in evidence a certified copy of the certificate of organization of the Skaneateles Water Works Company filed in the office of the secretary of state, August 1, 1887, which is hereto annexed, marked Ex. 2.

Thereupon the plaintiff called as a witness WARREN B. DE WITT, who being duly sworn, testified as follows:

3 I am the clerk of the village of Skaneateles, and have custody of its records, and have them with me. I have a contract made between the Skaneateles Water Works Company and the village of Skaneateles.

Being shown the records of said village at page 529, a resolution there appearing adopted at a meeting April 20, 1889, was offered and received in evidence, and is as follows:

"Resolution, That the proposed contract as agreed upon by the committee appointed by this board and the committee appointed by the Skaneateles Water Works Company, be and the same is hereby accepted and adopted and the committee discharged, and the president of this board be, and he is hereby authorized and directed to execute the same for and in behalf of the said trustees of the village of Skaneateles and affix the corporate seal of said village. Carried. Ayes—Barrow, Kelly, Sheppard."

At that time I think there were three trustees and a president. Milford, president; Barrow, Sheppard and Kelley, trustees.

The contract referred to between the village of Skaneateles and the Skaneateles Water Works Company was received and is hereto annexed marked Ex. 3.

The witness was shown volume A of the Records of the Village of Skaneateles, page 569, under date of Sept. 14, 1889, and testified that that was the village records. Thereupon the following from such record was offered and received in evidence:

4 "At a special meeting of the trustees of the village of Skaneateles, held at the fireman's room at the call of the president, the following officers were present: T. Kelley, Sheppard, J. D. Barrow, trustees. On motion of Mr. Sheppard, seconded by Mr. Kelley, Mr. Barrow was appointed clerk of the meeting in place of Mr. Benedict absent. Mr. George Barrow, president of the Skaneateles water works, appeared before the board on behalf of said company and made an application for a renewal of the franchise of said company, and thereupon Thomas Kelley offered the following preamble and resolution and moved its adoption, viz:

Whereas, on the 5th day of July, 1887, the corporation of the village of Skaneateles, N. Y., granted to John E. Waller and others of Skaneateles, N. Y., a franchise and contract to operate in the village of Skaneateles a system of water works for supplying said village and its inhabitants with water, it being provided and such franchise was granted on condition that the company to be formed by John E. Waller and others should have its work in general operation in said village within two years from Dec. 1, 1887; and

Whereas, the proposed company having been formed has failed to complete its works as aforesaid;

Now therefore, the said company having applied for a renewal and extension of said franchise and term, resolved that said franchise as recorded in the village record be and the same is

5 hereby renewed, and the term of the completion of the work is hereby extended until Dec. 1, 1890, on condition that said

franchise shall be void if said company shall not have completed its work within one year from Dec. 1, 1889; it being understood that the contract made by said village with said company shall continue to be binding upon said company, and this franchise is renewed upon that condition.

The resolution was thereupon adopted on motion of Mr. Kelley, seconded by Mr. Sheppard.

The meeting then adjourned *sine die*.

J. D. BARROW, *Clerk pro Tem.*"

Plaintiff then offered in evidence from the same record page 666, dated Feb. 21, 1891, the following entry, which was received:

"Notice having been given and the practical test specified in the contract dated April 23, 1889, having been made, on motion of E. D. Wheaton, seconded by Thomas Kelley, resolved that the forty hydrants of the Skaneateles Water Company be accepted according to the terms and conditions of said contract, to begin with Feb. 1, 1891. Carried; ayes, Kelley, Sheppard, Wheaton.

S. E. BENEDICT, *Clerk.*"

Plaintiff then offered in evidence a mortgage given by the Skaneateles Water Works Company dated August 22, 1890, to secure the payment of forty thousand dollars' worth of bonds of the company and recorded Sept. 9, 1890, in Book of Mortgages 259 at page 183. The same was received and is hereto annexed and marked Ex. 3½.

6

The plaintiff then offered in evidence another mortgage dated Feb. 1, 1895, made by Skaneateles Water Works Company to Delaware County Trust, Safe Deposit and Title Insurance Company of Chester, Pa., as trustee, to secure the payment of $10,000 worth of bonds, recorded in the clerk's office of Onondaga county in Book 287 of Mortgages page 455, Feb. 5, 1895; which was received and is hereto annexed marked Ex. 4.

The witness continued: I am a resident of the village of Skaneateles; have lived in the village about 14 years and am 30 years of age; have been clerk of the village since March, 1896. My immediate predecessor was S. E. Benedict. I have the records of the village during the time I have acted as clerk here. I wasn't clerk when a meeting of the board of trustees of the village of Skaneateles was held for the purpose of appointing a water commission. I hadn't taken office at that time. I can find the record of that meeting.

Plaintiff offered the record of that meeting in evidence which was received and read as follows:

"SKANEATELES, N. Y., *March* 21, 1896.

Special meeting called by the president met at the office of E. Norman Leslie for the purpose of appointing water commissioner for the village of Skaneateles and such other business as may come

before the meeting. Present: E. Norman Leslie, president; John Connell, Edwin Whiting and Edward Dent, trustees.

On motion of John Connell, seconded by Edwin Whiting, resolved that the president be and he hereby is authorized to appoint the following-named persons as water commissioners of the village of Skaneateles, N. Y.: Lemuel D. Hall, James A. Root, Edward Eckett, John L. Shultz. Carried; ayes; Connell, Whiting, Dent.

The president appointed the following-named persons as water commissioners for the village of Skaneateles; Lemuel D. Hall, James A. Root, Edward Eckett and John L. Shultz.

On motion of Edwin Whiting, seconded by John Connell, resolved, that the above appointments made by the president, as follows: Lemuel D. Hall, James A. Root, Edward Eckett and John L. Shultz as water commissioners be and the same is hereby confirmed. Carried: Ayes; Connell, Whiting, Dent."

Plaintiff then read in evidence from the minutes of the board of trustees of a meeting held April 23, 1896, on page 366, the following:

"To the trustees of the village of Skaneateles.

GENTLEMEN: We, the board of water commissioners of Skaneateles village, having organized by the election of a president, secretary and treasurer, would respectfully request your honorable body to issue a call for a special election to determine the ques-
8 tion of bonding the said village to furnish a supply of pure and wholesome water for said village pursuant to chapter 181 of the Laws of 1875.

Yours respectfully,

LEMUEL D. HALL, *President.*
JOHN L. SHULTZ, *Secretary.*"

"On motion of Edwin Whiting, seconded by Edward Dent, resolved, that the clerk in conformity with the call of the board of water commissioners be directed to issue a call for a special election to be held in the trustees' room in the engine-house in the village of Skaneateles on the 9th day of May, 1896, from one o'clock until sundown of that day to determine the question whether the village of Skaneateles shall bond itself for the purpose of supplying said village with a supply of pure and wholesome water to the amount of $30,000 as provided by chapter 181 of the Laws of 1875. Carried. Ayes; Connell, Dent and Whiting."

It appears that all the trustees were present; three trustees and the president.

"On motion of Edwin Whiting, seconded by Edward Dent, resolved, that the clerk be authorized to have the following notice published in the Skaneateles Free Press for two weeks:

Special Election Notice.

We, the undersigned, board of trustees of the village of Skaneateles, county of Onondaga, N. Y. hereby give notice that a special election will be held in the trustees' room in the engine-house
9 in the village of Skaneateles, N. Y., on Tuesday, May 9, 1896, at which the question will be submitted whether a tax under the act chapter 181, Laws of 1875, authorized for the purpose of furnishing pure and wholesome water to the inhabitants of said village shall be levied and collected from the village as in that act provided, and whether the village of Skaneateles shall bond itself for the above-mentioned purpose to the amount of $30,000. The vote shall be by ballot; those in favor of taxes shall have printed thereon 'For the water tax' and the ballots of those opposed 'Against the water tax.' The polls of election will be open at one o'clock in the afternoon and continue open until sundown on the ninth day of May, 1896.

E. NORMAN LESLIE, *President.*
JOHN CONNELL,
EDWIN WHITING,
EDWARD DENT, *Trustees.*

Carried. Ayes; Connell, Dent and Whiting."

The witness continued: Subsequent to that I caused a notice to be published in the Skaneateles Free Press, and have a copy of that notice as I published it.

The notice was offered in evidence.

It corresponds precisely with the foregoing notice directed by the trustees except that in the heading thereof the word "notice" is omitted, and the heading of the published notice is "Special election."

10 I think I published that notice. They authorized me by the resolution to publish the notice, which is the resolution which has just been read and I made the publication in pursuance of that resolution of April 23. I also have the record of the proceedings of the special election referred to in the notice.

The plaintiff offered and there was received in evidence the record of May 9, 1896, which was as follows:

"SKANEATELES, N. Y., *May* 9, 1896.

The following officers met at the engine-house at one o'clock p. m. of the above date and received the votes as per resolution of April 23, 1896, as follows:

Resolved, That the clerk in conformity with the request of the water commissioners be directed to issue a call for a special election to be held in the trustees' room in the engine-house in the village of Skaneateles on the 9th day of May, 1896, from one o'clock until sundown of that day, to determine the question whether the village of Skaneateles shall bond itself for the purpose of supplying said vil-

lage with a supply of pure and wholesome water, to the amount of $30,000, as provided by chapter 181 of the Laws of 1875.

Carried. Ayes; Connell, Dent, Whiting."

I was present at that meeting as clerk, and acted as clerk; votes were received upon that occasion. I was present during the entire afternoon. After the balloting was done the vote was an-
11 nounced. The record is: The whole number of votes cast was 146; for the water taxes 181, against the water taxes 27; defective ballot 1, ballots returned not voted 1.

The defendant here read in evidence from the same record the following:

"On motion of John Connell, seconded by E. Whiting, that Edward Dent be appointed chairman of the board of inspectors of election. Carried; ayes, Connell and Whiting.

On motion of John Connell, seconded by E. Whiting, that John Connell be appointed inspector to receive ballots.

Carried, ayes; Connell, Dent and Whiting.

On motion of John Connell, seconded by E. Dent, that Whiting and W. B. De Witt be appointed ballot clerks. Carried, ayes; Connell and Dent."

I have now read the entire record of that meeting except the certificate of the board, which was as follows:

STATE OF NEW YORK, } ss:
Onondaga County, }

John Connell, Edwin Whiting, Edward Dent and Warren B. De Witt, being duly and severally sworn, each for himself says: The said Edward Dent, that he was chairman; the said John Connell, Edwin Whiting and Warren B. De Witt, that they were inspectors of election at an election held in and for the village of Skane-
12 ateles, N. Y., on the 9th day of May, 1896, and that the foregoing statement of the result of said election is true to the best of his knowledge and belief.

WARREN B. DE WITT,
JOHN CONNELL,
EDWIN WHITING,
EDWARD DENT,
Inspectors of Election.

Severally subscribed and sworn to before me this 9th day of May, 1896.

M. F. DILLON,
Justice of the Peace.

HENRY C. HOWARD, being called by the plaintiff and sworn, testified as follows:

I reside in Medina, Delaware county, Pa. I am managing a trust company at present, am a lawyer by training. I am connected with the Delaware County Trust, Safe Deposit & Title Insurance Company of Chester, Pa., and am president of the corporation. I

think in one of the mortgage- given by the Skaneateles Water Works Company we were substituted trustees in the place of some New York company, and are now the trustees named in both of these mortgages. We have been paying every six months the interest upon 40,000 first-mortgage bonds and 10,000 of second-mortgage bonds; and the money has been supplied to us as far as we know, by the Skaneateles Water Works Company or the obligor of the bonds. None of the principal of these bonds has been paid that I am aware of.

13 Upon cross-examination, he testified:

We purchased $20,000 of these bonds. I think it was $20,000 of the first issue, under the first mortgage. I think we paid 97½. I am not sure. I really don't know who took the other $20,000 of the bonds. We didn't sell them to somebody. They had been sold before we had anything to do with it; some New York trust company was originally trustee and handled the bonds. We didn't buy any of the second-mortgage bonds. They were sold, I think, through us. We sold them for the Skaneateles Water Company, I suppose. Mr. Hawley may have dealt with us, likely he did as representing the company; I think he is an officer of the company. I am not sure but what we guaranteed the payment of these bonds to a limited extent; probably a few thousand of them. We didn't guarantee the payment of the whole $40,000. It didn't guarantee the payment of $20,000. My impression is that we did guarantee in some individual cases some of the bonds to our customers where it was required. I could not tell you how many without examining our books.

I know Mr. Hawley, the president of this company; he lives in the same town I do. He is a banker; he is president of the First National Bank of Medina now. Yes, another bank in Medina. I don't think he suggested our taking those bonds originally.

14 I think the offer came to us through the American Pipe Manufacturing Company of Philadelphia. I visited Skaneateles at the direction of our board and Mr. Hawley came with me on that occasion as I was a stranger in this part of the world. I think Mr. Hawley is not the president of this pipe manufacturing company; he is a director, but whether he has any other office or not I am not able to say. I really don't know. I expect I knew that he was president of the Skaneateles Water Company at the time by looking at the papers. His name was on the bonds, so if his name was on the bonds I knew he was president and I suppose he had an interest in our buying the bonds of the pipe company. I am not a relation of Mr. Hawley. I think they were sold at 85. We were asked to bid on them, but we didn't bid. I think they had a bid at 85; that is what I understood they were sold at. The best I could do would be to say that they were sold either in the spring or summer of 1895. I think they were sold soon after this mortgage was created and that was 1895. Hawley is not a director in our bank, and I am not a director in his bank. He is not even a stockholder in our bank, nor I in his. I did not learn what the pipe company paid for these bonds. I understood that they came

into the possession of them by virtue of their being a construction company. That they didn't pay the money, but the consideration was work or material furnished. That was our understanding
15 of the way they got their bonds. That was our understanding at the time. So understand in all cases, that they get those bonds in consideration of construction. I understand they give value received of course, but not a loan of money advanced. They are constructors of water works and take bonds in payment. Mr. Hawley's full name is Joseph W. Hawley.

WARREN B. DE WITT, being recalled and examined by plaintiff's counsel, further testified as follows:

I stated that I was present during the election which was held on the 9th of May and acted as poll clerk. The poll clerk takes down the names of the voters as I think that is what I did. I took down the names of all the voters that voted, I think. I don't think there was any votes received of persons residents of the village of Skaneateles who were not tax-payers of the village; none received unless they were tax-payers as I understand it.

Q. During the time you were present was there any votes offered by a resident of the village who was not a tax-payer to your knowledge?

A. Well, to answer that conditionally there was one offered; it was John E. Haywood who offered to vote. I know him personally; he is a resident of the village, was at that time. I should say he was a voter. The last annual election held in the village
16 of Skaneateles of trustees was some time in March. I don't know exactly what day. (Mr. Dillon, attorney for defendants, says the 17th.) I suppose the next annual election will be a year from that date in March. I don't know just what day.

It is conceded that the village was organized under the general village law; and that the annual election of the village is held on the third Tuesday in March.

The WITNESS (after examining the record): It was the 17th last year. The persons who were appointed as appears by the record to be water commissioners of the village I think took and filed an oath of office. I think I have it with me.

Witness produces them.

They were offered and received in evidence, marked Ex. 7, Ex. 8, Ex. 9, inclusive, and one of them reads as follows:

"I do solemnly swear or affirm that I will support the Constitution of the United States and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of water commissioner of the village of Skaneateles according to the best of my ability, and I do further solemnly swear or affirm that I had not directly or indirectly paid, offered or promised to pay, contribute or offered or promised to contribute any money or other valuable thing as a consideration or reward for the giving or with-

holding of votes at the election at which I was appointed to
17 said office, and have not made any promise to influence the giving or withholding of any such vote.

(Signed) JAMES A. ROOT.

Sworn to before me this 22d day of March, 1896.

M. F. DILLON,
Justice of the Peace."

(The affidavits of the other commissioners were in the same form.)

I have been acting as clerk of the water commissioners. The water commissioners have entered into a contract for the construction of water works in the village of Skaneateles. I have that contract with me.

The contract is offered in evidence; received and marked Ex. 10, and is hereto annexed.

Since the execution and filing of that contract a change has been made in it. I have it in writing. I haven't got that one here. It was a small contract that the engineer had with him in his pocket. I didn't think of that. We had it on file and he has taken it, the engineer had it. The engineer got it I guess. You might say that it isn't in shape to file yet. There has been no other contract executed between these water commissioners and anybody for the construction of water works to my knowledge. I don't think
18 there is a verbal contract existing. This is the only contract that exists that I know of in regard to the construction of water works in the village of Skaneateles, and is the only one that I have on file in the office of the clerk of the village. A part of the work has been done under that contract. I should imagine something like a third of the work, some pipe has been laid. I don't think I can tell you the date that they commenced to lay pipe. I think the date they commenced to work under this contract and perform work was about the 22nd day of October. I am not positive to a day, that is my memory. And since then considerable pipe has been laid and a reservoir constructed. That is the principal work that has been done so far, except there has been work on the well. They have been working at the well I should think it must be five weeks or six weeks perhaps. I suppose under the same contract. This contract was made with John Marsden.

Q. Is he constructing the well under this contract?

A. Everything is charged to Mr. Marsden and Mr. Marsden pays the bills. No contracts have been let for any construction except the contract referred to which is not in evidence. The bonds of the village for the purpose of raising money to pay for the construction of the water-works system have been sold. Thirty of $1,000 each. They were sold by the water commissioners.

19 in referred to was held on Jan. 29, 1896, the record of which is as follows:

"Skaneateles, N. Y., January 29th, 1896.—The following officers

met in the engine-house at 10 o'clock a. m. on the above date to receive the votes as per resolution of Jan. 15, 1896, as follows: Resolved, That the trustees of the village of Skaneateles be and are hereby advised to enter into or not to *t*enter into

I knew of the construction of the works of the Skaneateles Water Work- Company. That is the company that is existing there now. And I am aware of the fact as a resident of that village that since 1890, or about then, that company has been furnishing water for the citizens of that village. I know where that company derives its water, from what source. It is from Skaneateles lake. I was aware of the existence of the contract. It has been put in evidence here, between the village and the water works company. I think it expired Feb. 1, 1896. After that contract expired I think there was some correspondence passed between the company and the village. That contract was not renewed as I know of. Since Feb. 1, the village has had no contract with the Skaneateles Water Works Company. There was a meeting called by the trustees of the village at which the people of the village voted upon the subject whether they would or would not renew a contract with the Skaneateles Water Works Company. I think there is a record of that meeting
20 and the call, Jan. 29, 1896. I find the election. I find the call and resolution Jan. 15, as follows:

"On motion of John Connell, seconded by Edwin Whiting, Resolved, That a special election shall be held in and for the village of Skaneateles by the qualified voters thereof in the engine-house in said village, on Wednesday, January 29, 1896, from 10 o'clock a. m. until sunset, on said 29th day of January, 1896, to vote on the following proposition, to wit:

'Resolved, That the trustees of the village of Skaneateles be and are hereby advised to enter into or not to enter into a contract with the Skaneateles Water Works Company for the use of forty hydrants for fire or other municipal purposes, for the term of five years, at the annual rate of fifty dollars per hydrant, or $2,000 per year.'

The above resolution being of an informal character is taken under the act of 1887, conferring additional powers upon villages for the purpose of carrying out some other proper village object.

The ballots of such special election shall have the following words thereon, to wit: 'For such contract,' 'Against such contract.'

Carried. Ayes: E. Norman Leslie, president; John Connell, Edwin Whiting and Frank Adams, trustees."

In pursuance of that it appears the meeting there-

21 a contract with the Skaneateles Water Works Company for the use of forty hydrants for fire or other municipal purposes, for the term of five years, at the annual rate of fifty dollars per hydrant, or $2,000 per year."

Present John Connell, Edwin Whiting, and Frank Adams, trustees.

"On motion of John Connell, seconded by Edwin Whiting, that

Frank Adams be appointed chairman of the board of inspectors. Carried; Ayes: Connell, Whiting and Adams.

"On motion of Edwin Whiting, seconded by Frank Adams, that John Connell and S. E. Benedict be appointed inspectors to receive ballots. Carried: Ayes; Adams, Whiting and Connell.

"On motion of John Connell, seconded by Edwin Whiting, that Frank Adams and Edwin Whiting be appointed ballot clerks. Carried; Ayes; Adams, Whiting and Connell."

The election resulted as follows: the total number of votes cast was 115: for such contract 11; against such contract 98; defective ballots 6. Against such contract carried.

Prior to this I believe there had been some communication received from Skaneateles Water Works Company a letter. I have some of those letters. I don't know that I have everything. The date of the first letter that I have, I think is Jan. 2. It is from
J. W. Hawley, president of the Skaneateles Water Works
22 Company. I don't know whether this is the first letter we ever had or not, but it is the first I have here.

Letter offered in evidence by plaintiff; received and marked Ex. 11, and reads as follows:

MEDIA, PA., *January 2nd*, 1896.

To the board of trustees of the village of Skaneateles.

GENTLEMEN: The contract of the Skaneateles Water Works Company with the village of Skaneateles will expire on the first day of February, 1896, and we are compelled to inform you that we cannot renew this contract at the old rate. The present rate is thirty dollars per hydrant. The rate for renewal will be fifty dollars per hydrant.

"We have been greatly disappointed in the number of takers in your village. This and the limited quantity of water taken by many of those who became takers renders it necessary that our rate should be increased. We had hoped to have made the plant self-sustaining without this increase, but it seems that your people, either because of lack of sewerage system or for some other reason do not appreciate a water system. In increasing the hydrant rate to fifty dollars we are still below the rental charged in other places. In some places the rent is one hundred dollars per hydrant, and we do not think you will find any village in your State paying less than sixty for a pumping plant producing
the head of water furnished by this company. Since we
23 began operations five years ago we have been obliged every year to make up a large deficiency. We do not care to continue operating the plant in that way, preferring to discontinue it. The increase now proposed both to general consumers and to the village will still be insufficient to make up the deficiency, but it will not be so large that we will be unwilling to incur the risk of another five years' contract, and if at the end of that time the income shall warrant a reduction, we promise to make it. In the event that a new contract shall not be completed with you prior to the expiration of the present one, it must be understood that the old one shall

have ceased at the expiration of the present term. If the village shall decide not to take the water on the terms proposed, notice will be given of the date when the hydrants will be closed.

Yours truly,

SKANEATELES WATER WORKS CO.,
By J. W. HAWLEY, *President.*"

Another letter was offered and received in evidence, marked Ex. 12, and is as follows:

"MEDIA, PA., *January* 31, 1896.

"E. Norman Leslie, pres't board of trustees Skaneateles village.

"MY DEAR SIR: I have a copy of the resolution passed by your board Jan. 29, signed by S. E. Benedict clerk, which states
24 that the board of trustees declines to enter into another contract for water for fire protection of your village.

"This puts me, as the president of Skaneateles Water Co. in a very delicate position. As the present contract ends Feb. 1, 1896, and a refusal to renew it at any price would leave the town without any protection in case of fire, and the question of damages for non-use of hydrants would place a heavy loss on some one, and as the president of the water company I most earnestly object to being held responsible in any way.

"Very respectfully,

"THE SKANEATELES WATER CO.,
"Per J. W. HAWLEY, *Pres't.*"

Another dated Feb. 1, 1896, received in evidence and marked Ex. 13, which was as follows:

"MEDIA, PA., *February 1st*, 1896.

"To the board of trustees of the village of Skaneateles, New York.

"GENTLEMEN: We are in receipt through Mr. Burton of a notice to the effect that you have adopted a resolution refusing the terms offered you for hydrant rentals, on the ground that it is the sense of your tax-payers that they are in favor of municipal ownership.

"While the information received from private sources does not show that the tax-payers have voted upon the subject of municipal ownership, but solely upon the question whether they would accept
a new contract for hydrant rentals on the terms offered by
25 us, and while upon this question it appears that only 109 votes were received out of perhaps four hundred (400) competent voters, showing that possibly three hundred of your tax-payers are indifferent; we think the resolution adopted by your board must be considered as conclusive of your own views.

"We therefore give you notice, in pursuance of our former communication, that the hydrants will all be closed on the fifteenth (15th) day of February, 1896. We give you this fifteen days' notice that you may be enabled to provide your village with other fire protection before the hydrants are closed.

"Yours respectfully,

"THE SKANEATELES WATER WORKS CO.,
"By J. W. HAWLEY, *President.*"

Another dated Feb. 7, 1896, was received in evidence marked Ex. 14, and is as follows:

MEDIA, PA., *Feb. 7th*, 1896.

"E. Norman Leslie, Esq., pres'd't board of trustees, Skaneateles village.

"DEAR SIR: I have your letter of Feb. 5th, suggesting a continuance of the former contract for hydrant rental for your village for one year.

"In my communication of January I plainly set forth that the proposed increase was not that the water company should be enabled to pay a dividend to its stockholders—but simply to enable it to pay the expense of running the plant, and that the proposed
26 increase would be taken off as soon as the company can afford to do so.

"Now, I don't think we should be asked to pay out of our personal funds to put the residents of Skaneateles out of danger of fire and to reduce their payment to insurance companies.

"The stockholders have not received any benefit whatever from the plant. The inhabitants of Skaneateles have received everything.

"I do not think we ask anything unreasonable. This town of 3,000 inhabitants pays for private use over $8,000, and could your people be induced to take the water it would soon make it possible to reduce the charge to the village.

"Since writing the above I have received a copy of the Democrat, containing your communication, and reading it carefully with your letter it looks as if the object of the village was to obtain protection from us while they had time to construct opposition works as the people of Canandaigua did. I hope I am wrong in this conclusion, for the feeling of the company towards the village is of the kindest, and we only ask for help during the emergency.

"I did not understand that none but tax-payers were permitted to vote at the election of Jan. 29, and if that was the case, as you state in your letter, the ladies should have been allowed to vote, and i think the eighty votes of the ladies would have been voted for protection from fire.

27 "Hoping your may see your way clear to assist us out of the difficulty in a more substantial manner, I am

"Respectfully yours, J. W. HAWLEY."

A letter from Mr. Leslie to Mr. Hawley dated Feb. 13, 1896, was received in evidence marked Ex. 15, and is as follows:

"SKANEATELES, *February 13th*, 1896.

"J. W. Hawley, Esq.

"DEAR SIR: Your letter of the 7th inst. was duly received and contents noted. Since its receipt I have had the correspondence published in the Democrat here.

"As president, I have been authorized to correspond with you to ascertain, if possible, the minimum terms by which your plant here can be purchased by the village. But since the vote of authorization was passed I have inspected the annual reports of the Skane-

ateles Water Works Co. at the county clerk's office. The first was filed with the secretary of state, Jan. 26, 1892; the next one filed Dec. 17, 1894; and the third and last one, July 22nd, 1895. According to these statements it would appear that your plant has been mortgaged for $50,000, and, further, that you have issued $40,000 in paid-up stock, thus making in all $90,000.

"This being the case, it seems to me to be unnecessary for me to continue this correspondence for the purpose designated, as
28 your investment here, as per your reports, is entirely beyond any consideration by the authorities of this village.

"Very respectfully, E. NORMAN LESLIE,
"President of the Village."

A letter from Mr. Hawley to Mr. Leslie, dated Feb. 17, was received in evidence, marked Ex. 16, and is as follows:

MEDIA, *Feb. 17th*, 1896.

E. Norman Leslie, Esq.

PRESIDENT: I am not aware under what parliamentary rule your honorable body operates, but I understand that if a corporate body instructs a president to perform certain acts it is his duty to do so, regardless of his own "presumption."

"You say that you were authorized to correspond with the Skaneateles Water Company in relation to the purchase of the plant, but in the same letter say you presume it is unnecessary to continue the correspondence.

"If you seriously object to asking the stockholders of the Skaneateles Water Company at what rate they will part with their holdings, we will be happy to correspond with any other member of your honorable body they may select.

"Very respectfully, J. W. HAWLEY."

A reply to the above dated Feb 20, 1896, was received in evidence, marked Ex. 17, and is as follows:

29 "SKANEATELES, *February* 20, 1896.

"J. W. Hawley, Esq.

"DEAR SIR: I have your favor of the 17th inst. and note contents. Our parliamentary law is governed by the usual practice of the organization a sort of 'go-as-you-please plan,' but we will not discuss that subject farther, but come at once to the main question. As president I was only authorized to correspond with yourself as president of the Skaneateles Water Works Company, not to the company or to the stockholders, but to yourself.

"Now, will you please state to the authorities of the village of Skaneateles your very lowest terms by which you will dispose of your plant and franchise in this village, free of all mortgages or other incumbrances? The stockholders, if asked, might place a price on their interest, at the same time might intimate that the plant was subject to the bonds which had been issued by the loan & trust company, to whom the plant had been mortgaged. What is wanted is

a price free from all incumbrances of any description. Now this is a plain and distinct question, and as soon as your reply is received it will be submitted to the authorities of the village.

"Very respectfully, E. NORMAN LESLIE,
"President of the Village."

A letter to the president and trustees of the village of Skaneateles from Mr. Hawley was received in evidence, marked Ex. 18, and is as follows:

30 "MEDIA, PA., *Feb. 24th*, 1896.

"To the president and trustees of the village of Skaneateles:

"With very much regret, and solely for the purpose of protecting the interests of the Skaneateles Water Works Company, and after consultation with the stockholders, and with their approval and by their direction, I give you formal notice that the hydrants in your village, forty in number, have been closed.

"We give this notice because we wish it clearly understood that if an isolated fire should occur, or if an extensive conflagration should be threatened, there must be no interference with the hydrants; not that we think there would be, but because we have heard it suggested that the village can refuse to enter into a contract for hydrant rentals, and then in the event of a conflagration expect the water company to furnish water with which to extinguish it; while there are some in every community who would expect to forcibly open the hydrants in such an event. We wish it understood that the works of the company, whether closed or open, are under your protection. We require that they be protected as closed, and in event that they shall be opened by you as a justifiable procedure in the face of great danger, or under your sanction, or by any other person with or without responsibility, for the purpose of extinguishing fires, we shall make a charge against you
31 in each instance of two thousand dollars, as the reasonable value of the service which may be rendered.

"We would say, however, that we have directed Mr. Burton to reduce the pressure on the pipes, as the water is not needed for fire protection, and nothing in the foregoing shall obligate the company in any event to resume the former pressure, or keep the pipes supplied in event of fire.

"Very respectfully,
"THE SKANEATELES WATER WORKS COMPANY,
"By J. W. HAWLEY, *President.*"

A letter from Mr. Hawley to Warren B. De Witt, secretary, dated April 6, 1896, was offered and received in evidence, marked Ex. 19, and is as follows:

"MEDIA, PA., *April* 6, 1896.

Warren B. De Witt, secretary.

DEAR SIR: I have your letter of April 2, asking if I desire to sell the water plant in your village and when the same could be de-

livered free of incumbrance. There seems to be a misunderstanding of my ownership of the Skaneateles water works by the trustees of the village of Skaneateles, and for your information I will give you a history. These water works were built for the Skaneateles Water Works Company partly by a company in New York city, who were unable to complete the same, which was done by the American Pipe Manufacturing Company of Philadelphia, who held the stock issued.

The bonded debt was $40,000, which was spent entirely on
32 the works and was not sufficient to complete the work. I purchased of the American Pipe Company $20,000 stock of the company, and afterwards $10,000 of Mr. Hall of Skaneateles. The operating expenses with the interest on debt exceeded the income, so that in 1894 the stock was increased to $50,000 and the debt to $50,000, the extra $10,000 being used to take up the floating debt, being money borrowed to operate the plant and pay interest. These bonds are held by holders for full value, many of them women, some in New York State, the balance in Philadelphia and vicinity. The interest in the company which I control and have for sale is $33,000 of the capital stock, which, of course, is a controlling interest in the works. As I stand behind the bonds issued and purchased by the holders in good faith, I cannot sell this stock without an agreement that the principal and interest of these bonds should be provided for. You can, therefore, see that what I have to sell is $33,000 of stock of the company, which I bought at a reduced price, hoping that the increased consumption of water in the village would make it profitable. I therefore make the following offer for you to present to your board: I will leave to the four men appointed by the village of Skaneateles as the Skaneateles water board to fix the price the village can afford to pay me for the $33,000 of stock, subject to an agreement that the village will honestly protect and pay principal and interest of the bondholders for their bonds when due. Whatever price they say is a fair and equitable settlement for the
33 same I hereby agree to accept, placing full confidence in their desire to do what is right for the village and myself. I therefore leave the matter entirely in your hands, which I think is as liberal as I can afford.

Respectfully yours, J. W. HAWLEY."

A letter to the board of trustees of the village from Mr. Hawley dated May 27, was offered and received in evidence and marked Ex. 20, and is as follows:

"MEDIA, PA., *May* 27, 1896.

"To the board of trustees of Skaneateles village, N. Y.

"GENTLEMEN: Mr. George Barrow, as attorney for the Skaneateles Water Works Company, was authorized to make a proposition to the village authorities, that in case condemnation proceedings were entered into by the village the water company would bear certain part of the costs, but in view of further consideration and non-acceptance of the proposition, so much of the offer is now withdrawn.

"When this company asked of the village an increase for hydrant rentals to fifty dollars per annum we were not aware of the fact that

the franchise limited us to forty dollars, and as there was no intention on our part to violate the terms of the franchise, we withdraw that proposition.

"The offer made by Mr. Barrow, the attorney for the company, to furnish the village with fire protection at forty dollars per
34 hydrant per annum for five years, then for five, ten, or fifteen years at thirty dollars per hydrant per annum, is renewed and awaits your early consideration.

"In a former communication I advised you that if in case of fire the hydrants should be used by the village, that the village should be held responsible, and that for any such use would be charged two thousand dollars.

"This I now recall, and insert in its place, that if in case of fire the village should use the hydrants they should be charged such sum as shall be judged just and reasonable.

"Respectfully, J. W. HAWLEY,

"*President of Skaneateles Water Works Co.*"

I have no other letters from Mr. Hawley, or written to him, that I know of. I think I have an offer that Mr. Barrow filed with the board which is referred to in this letter. The document you show me was handed to me by you (Mr. Barrow) upon the 6th day of May at the time of voting I think in the afternoon. There was a public meeting held in Skaneateles on the night preceding. I attended. I filed that communication in the office of the clerk of the village the next day I think.

The communication was offered and received in evidence, marked Ex. 21, and is as follows:

"SKANEATELES, *May 9th*, 1896.

"To the people of the village of Skaneateles:

35 "In view of the present controversy existing between the president and trustees of the village of Skaneateles and the Skaneateles Water Works Company, and with the view of avoiding litigations and rivalries, which would necessarily be injurious to both, and in the interest of fair dealing and justice, I, being duly authorized, do make to the people of the village of Skaneateles the following propositions:

"First. That the Skaneateles Water Works Company will enter into a contract with the village to rent its hydrants at the sum of $40 each, per annum, for the next five years, and from and after the expiration of the said five years, for the sum of $30 each annually, for a term of five, ten, fifteen, twenty, or thirty years.

"Second. Or, the said Skaneateles Water Works Company will consent to condemnation proceedings waiving all irregularities, if any, in proceedings thus far taken for the acquisition of its property, rights, and franchises by the village under the provisions of section 22 of chapter 181 of the Laws of 1875, and any act amendatory thereof or in substitution of the same, authorizing such proceedings.

"(Signed) GEORGE BARROW.

"Objection having been made to such condemnation proceedings on behalf of the village on account of the expense thereof, it
36 is further agreed by said water company that if such proceedings shall be brought the said Skaneateles Water Works Company will upon the demand of the village pay all the expenses of such commission, excepting counsel fees.

"GEORGE BARROW."

After the appointment of the water commissioners as shown by the record those commissioners filed bonds in my office and in the office of county clerk.

Being cross-examined, the witness testified:

I find on file an appointment of the water commissioners which is now shown me: That is the signature of E. Norman Leslie, the president of the village. It is endorsed, "Filed March 21, 1896, Warren B. De Witt, clerk."

The defendant offered the paper in evidence. It was received, marked Ex. 23, and is as follows:

"VILLAGE OF SKANEATELES, *ss:*

Whereas the board of trustees of the village of Skaneateles have authorized me, the president of said village of Skaneateles, to appoint water commissioners for the said village, now, therefore, I, the undersigned, the said president of said village of Skaneateles, do hereby appoint Edward Eckett, John L. Schultz, Lemuel D. Hall,
37 and James A. Root water commissioners of the village of Skaneateles.

E. NORMAN LESLIE,
President of the Village of Skaneateles.

Dated March 21st, 1896."

The plaintiff then offered in evidence the extension of the franchise of the plaintiff heretofore read from the records of the village of Dec. 14, 1889, containing also the consent of the supervisors of the town of Skaneateles. Same was received in evidence and marked Ex. 34, and is hereto annexed.

GEORGE BARROW, being sworn as a witness for the plaintiff and examined by Mr. Hawley of counsel for the plaintiff, testified:

I reside in Skaneateles, and have for a good many years. I am an attorney-at-law. I have been connected with the Skaneateles Water Works Company ever since its organization, and am now, and am the plaintiff's attorney in these actions. I remember the time when the water company made an application to the village board for the extension of the time for the construction of their works which resulted in the passage of the resolution which
38 is a part of Ex. 34. I was present on that occasion. I am able to say whether prior to that time the stock of the company had any of it changed hands from the original incorporators. It had. At the time of this village meeting there were other stock-

holders of the company present besides myself, namely, Edward S. Perot of New York; James P. McQuaid; he resided I think in New York. We three gentlemen went there together to make this application to the village. It resulted in the passage of the resolution which is contained in Ex. 34. These gentlemen were known to the trustees or introduced to them. The plaintiff constructed those water works about the year 1889, during that year. The franchise contained some conditions that the hydrants should be located according to the wishes or direction of the village authorities. That was done.

(Mr. TRACY: I don't dispute but what the hydrants were located as the village directed.)

Witness resumed: Well there were some changes made afterward. They were located in accordance with the direction of the village authorities. At the time these water works were constructed there were no other water works in the village of Skaneateles. And there never had been during my acquaintance, and there never has been until the inauguration of the present movement on the part of the village. Prior to the incorporation of the
39 plaintiff, as a citizen I made an effort as a citizen of Skaneateles to have organized there a municipal corporation. I made efforts to work up a sentiment in favor of the construction of a water-works system by the village. I saw prominent citizens of the village of Skaneateles and conversed with them on the subject. I could not state who they were. I urged in such conversation the need of the village for a water system of its own and the advantages to be derived from it. My effort in that respect was quite general. I should think I must have talked with fifteen at least, fifteen leading citizens at that time. I don't recollect that I conversed with the then existing members of the board of trustees. I don't recollect that I could name the trustees as any I talked with. After that I entered into the plan and promoted to some extent the organization of the present plaintiff. They went on and constructed their system. The pipes are laid in all the streets of the village I think; they do not extend in some cases to the ends of all the streets, but they extend so far as to cover the dwellings substantially upon the different streets. And the system is a pumping system with a pumping plant on the shore of Skaneateles lake, and the water is elevated to a standpipe I think about 160 or 180 feet from the lake, and is distributed through the pipes from the standpipe. The pressure has been tested for fire purposes, and it has been proved to be sufficient to furnish an adequate protection for fire. The
40 source of supply is Skaneateles lake. That is a good quality of water. The system from the time of its completion up to the first of February last has been in continuous operation without a break. I have been all the time the local representative of the company. I have never known of any complaint either as to the adequacy of the system, the service rendered to its customers or quality of the water.

I know whether or not the consent of the superintendent of

public works was given to the taking of the water from the lake. The consent was in writing. I attended a meeting on the 8th of May, 1896, in Skaneateles. It was a meeting, or was called by the alleged water commissioners for the purpose of—I went there. It was held in the Library hall (so called) in Skaneateles village. The commissioners, Mr. Root, Mr. Shultz, Mr. Hall, and I don't know whether Mr. Whiting was there or not. I think he was. Among other things at that meeting I made a proposition stating I was authorized to make it by the water company. That was true, and I offered to make a lease for a term of five years for hydrant rental at $40 a year, and after that for five, ten, fifteen, twenty or thirty years at $30 per year, as they might see fit. And I also offered that if they would, the village, would take condemnation proceedings to acquire the plant of the existing company that the plaintiff in this case would pay all the expenses of the condemnation
41 proceedings except the fees of counsel employed by the village. The next day I embodied the proposition in a writing and took it to the village clerk and left it with him to be filed, which is the same document that has been put in evidence here. Nothing took place at that meeting that bears upon this controversy. No statement was made in reply to my proposition to the commissioners, no proposition and none since. I can tell you whether the income of the Skaneateles Water Company from its customers including the village has been sufficient to pay interest upon its mortgage debt and its current expenses.

Q. Will you state whether or not it has been?

Objected to by the defendants as incompetent, immaterial, not the best of evidence and calling for a conclusion.

The REFEREE: "The evidence should be confined to the income of the plaintiff from the plant and a statement of its expenditures. I sustain the objection upon the ground that the question calls for a conclusion of the witness and I permit you to show the fact by stating the amount of the income and the amount of the expenditures."

Objection sustained and the plaintiff excepted.

42 I am able to state what the largest income of the company has been in any year. It has not exceeded $2,900. The annual interest charge is $2,400 now. The interest upon the bonds is $3,000. I know very nearly what the operating expenses are per annum. They will amount to at least $1,000 a year. Have a familiarity as to the rates charged by the plaintiff in Skaneateles compared in a general way with the rates ordinarily charged in municipalities of that size.

Q. I mean as to whether they are higher or lower, or about the same.

The REFEREE: "I think he may state what the rates are in the other places the size of Skaneateles."

The witness resumes: I cannot do that.

The REFEREE: "I will admit the evidence by showing the names of the places."

Objected to as calling for a conclusion, incompetent, immaterial. The objection was sustained, and the plaintiff excepted.

Prior to the appointment of the present water commissioners there had never been any water commissioners in Skaneateles. The board of trustees of the village had never organized as a water board. The population of Skaneateles is a little less than 2,000. Its assessed valuation is approximately one million and a quarter.

To my knowledge that present company, the Skaneateles
43 Water Company has not been requested by the village to furnish water pursuant to the conditions of the franchise since Feb. 1, 1896.

The superintendent of the Skaneateles water works is John Burton.

The plaintiff offered in evidence a letter dated Jan. 30, 1896, which was received and is as follows:

"SKANEATELES, N. Y., *January* 30, 1896.

John Burton, superintendent Skaneateles Water Works Co.

DEAR SIR: At a meeting of the board of trustees, held January 29th, 1896, the following resolution was passed: Resolved, That we refuse to enter into contract with the Skaneateles Water Works Company for the rental of hydrants for the village of Skaneateles, for the sense of the tax-payers is in favor of municipal ownership. Carried.

E. NORMAN LESLIE, *President.*
JOHN CONNELL,
EDWIN WHITING,
FRANK ADAMS, *Trustees.*

Per order of the board of trustees.

S. E. BENEDICT, *Clerk.*"

44 Cross-examination:

I should say I talked with at least 15 men about the subject of water. I can't give you the names of those men. I can give you the names of men that I believe now I did talk with. I don't believe I could name positively any of the parties who were adverse to the village owning the water works, or the same being established. I acted as attorney in getting up this corporation. The original incorporators were John E. Waller, George H. Wicks, Lewis B. Fitch, Edwin E. Hall, John McNamara, Benjamin F. Petherin and George Barrow. Those were the original incorporators. I think John K. Knox was also one of the incorporators. After the articles of incorporation were framed subscriptions were opened to capital stock. I couldn't tell where those subscriptions are. I couldn't tell you whether they were preserved. I presume they were. I have no reason to think they have been destroyed by the plaintiff. I could not tell you whether stock books were opened. I think there were. I think there was a stock ledger showing the capital stock to be taken, and who it was issued to. I don't know whether there is a stub book with stubs of the certificates. I never kept it. I don't know whether there was or not. I don't know when the

capital stock was issued. In the first place I think there was seven of us who subscribed and paid for seven
45 shares. I think the incorporators subscribed for ten shares each and paid for that; that had to be done you know by law I think. That was done at any rate. I know there was seven of the directors subscribed for and took each of them ten shares. They paid for that, $100. That is I mean the shares were $100 apiece. I think they paid for the entire ten shares $1,000. It is my recollection that we paid $1,000 for ten shares at the time of the organization. Stock was not issued to me at that time. There was afterward. We subscribed for it and paid in so much money. We paid in 10 per cent. of the subscription or paid the whole amount. I think the whole subscription was paid in, but I am not positive. Subsequent to that time some of the incorporators failed to subscribe for capital stock. I think Mr. Knox, Mr. Wicks, Mr. Hall, Mr. McNamar, Mr. Petherin and I subscribed, and my son, Charles A. Barrow, he became a director in somebody else's place and subscribed.

I think the rest of the incorporators did not subscribe. There was some who did not; I think I have got those right. All those I have mentioned subscribed and paid in a thousand dollars apiece; that is what I understand. That is my recollection of the way it was done. I could not tell you how they paid in. I think it was checks, all gave checks. Whether the checks were paid I don't know. The next thing that was done in relation to the stock was after the—there was a contract made for the construction of
46 the plant. I don't know whether that was the next step, but it was a step in the proceeding. I don't know of any stock being issued after this first lot that I have mentioned before the contract was made. The first contract was made with the Skaneateles Construction Company. That was executed. I couldn't tell you who composed it. I was one of the members of that company. I think Mr. Hawley was not. It never had an office in Skaneateles. I could not tell you whether any resident of Skaneateles was ever connected with it. I don't know that it was a corporation. I presume it was an association got up for the purpose of constructing these water works. I don't know whether it ever had any other business before or since; none that I know of. I think it was organized in New York, but I don't know. I had nothing to do with the organization. I think that a man by the name of Thomas S. Goodrich, and a man by the name of Jackson, and a man by the name of McQuaid; and I don't know but a man by the name of Perot were members. I don't know but W. S. Pirot was a member of it. I think he may have been. I couldn't tell whether they were connected with the American Pipe Line Manufacturing Company. I think some of them had some interest in that company. I think Pirot had an interest in that company. I don't know of any others that did. The American Pipe Line didn't have a branch in this State that I am aware of. The American Pipe Manufacturing Company, not that I am aware of.

The next step was a contract with this company under
47 which the works were constructed. I don't know where that contract is. I couldn't tell whether the water works company has it, or a copy of it. I never saw it myself. Had nothing to do with the drawing of it. That business was transacted in New York and I didn't draw the contract. I have heard there was such a contract. I have seen a partial record of it in the minutes of the company. I will swear I have never seen it, never tried to see it. So far as I know the company have the contract or a copy. I have never heard of its being destroyed. I know what substantially the terms were; substantially that is as I was informed. I know it by hearsay and I know it by having seen the record of it upon the minutes but the record didn't have a copy of it. The resolution authorizing them to make a contract on certain terms mentioned. I don't know that I can get the contract; if I can I will; I will write for it. Subsequent to the execution of this contract the corporation I suppose delivered a number of bonds. That I know from hearsay. The Skaneateles Construction Company didn't put in the water plant. The American Pipe Manufacturing Company did. The construction company assigned the contract to the pipe line company, and the latter put in the plant. I think I have seen that assignment. I think it is with the papers of the company. After making this contract I suppose the Skaneateles water works delivered a quantity of bonds. I only know
48 that by hearsay. I understand they did. I drew the mortgage and the bonds; had them printed. I suppose the bonds were delivered after they were certified by the trust company to the water company. When they had been delivered to the water company then the water company sold them. The water company delivered them I suppose, I wasn't present, but I suppose they delivered to the American Pipe Manufacturing Company. Those bonds amounted to $40,000. As far as I know no money was paid to the pipe line for them, and I know of no other consideration than this plant. At the time of this delivery of these bonds my recollection is that the trustees of the water works company were Edwin E. Hall of Skaneateles, myself, W. S. Pirot, who lived in New York. I could not tell you whether James Skeel was a trustee. I could not tell you that I prepared the annual reports. I could not give you the date when the bonds were issued. I think Joseph W. Hawley was a trustee of the company at that time. I could not tell you whether Edward S. Pirot was a trustee. The American Pipe Manufacturing Company was not a trustee that I know of. I do not think it ever was. It is news to me if they were. At the time of the issue of the bonds I think about $33,000 worth of the stock was held by the American Pipe Manufacturing Company. The whole capital stock was $40,000. The rest of it was held by those persons that I have mentioned, ten shares each. Hawley had become a stockholder; I think he had at that time.
49 I think somebody had resigned and he had been elected and the stock had been transferred to him. Some of the original incorporators held the stock at the time of issuing those bonds. I

did. My son did, Charles E. Barrow, Edwin E. Hall. I don't know of any more, I don't know but some others. Whether there were any more I don't know. No, I think not. I presume the stock book of the corporation would show. I don't know anything about the stock book, I never saw it. The construction company had this contract and agreed to complete the works for $40,000 of bonds and a certain amount of the stock. So that as a matter of fact when these bonds were issued the principal stockholder was the corporation to whom the bonds were issued, and that corporation was the assignee of the construction contract. In 1894 the stock was increased $10,000. At that time most of the stock was held by Joseph W. Hawley and myself, and I prepared the papers for the increase of the capital stock. Mr. Hawley then owned $20,000, Edwin E. Hall $10,000 and myself $10,000. I had acquired my stock from the American Pipe Manufacturing Company except what I had before.

Q. And what did you pay for it?

Objected to as irrelevant and immaterial; objection overruled; exception.

A. I paid nothing. Whether I was merely a nominal holder is a question of law I take it. There was no cash consideration for the transfer. I think there was a consideration. I think my
50 relations to the whole thing were a consideration. Just legal services and future legal services and general friendship. I gave no money for the stock. I now remember no other consideration than what I have stated. That accounts for $30,000. The rest was held as I said, Mr. Hall 10,000 Joseph W. Hawley 20,000. That accounts for it all. I think perhaps there was some scattering shares that were held by other parties, and probably Mr. Hawley's didn't amount fully to 20,000; what Mr. Hawley really had at that time I don't know. I don't know anything about the stock books. I don't know whether they ever kept any, I have never seen any. There were really stock certificates, I have got certificates in the office. We have never paid any dividends on the stock. These people substantially continued to be the stockholders down to the time of the expiration of this contract on Feb. 1. Mr. Hawley had purchased Edwin E. Hall's stock prior to the expiration of the contract. I know from hearsay how much. I think Hall told me $2,000 or $2,500, I forget which, and that gave him a majority of the stock. We haven't been regularly assessed to pay expenses, but we have paid expenses out of our pockets as stockholders. I could not now tell you how much I have paid, but I have paid several hundred dollars, at different times. I have paid $200 at a time or more in cash. I was credited for services. I have been paid from time to time for services, not in money, in stock. I don't hold any
of these bonds, never held any of them. There were two
51 issues of bonds, the first was $40,000 and the second $10,000. I had charge of the proceedings of the second issue. The bonds were delivered by the trust company to the water company. I could not tell you to whom the water company delivered them.

I have no knowledge on the subject. I knew nothing about the transfer of those bonds except from hearsay.

In January or February, 1896, I don't remember having an interview with a reporter of a paper in Skaneateles. I have an indistinct recollection of something of that sort, of an interview being published in the Democrat Free Press or Skaneateles Democrat. I have never corrected the statement contained in that interview. I don't know whether I stated to the reporter at that time that I had little or no interest in the company. If I did it was pretty true. I don't recollect whether I did or not. I am not aware that I told him that I held scarcely any stock in it.

At the meeting I have spoken of where I made some offer on the part of the company to furnish water, I didn't state that I owned $5,000 worth of stock in the company, that I had paid money for, or paid in money. I didn't at that meeting state that I had paid $5,000 in cash for this stock. Nothing of that kind. Nor that I had paid into the company $5,000 in cash.

52 In regard to this plant, there are not two streets that I am aware of that the pipes are not laid in. I don't think there is any Austin street in the village. I think they are laid in West Austin street. I don't know whether they are laid in Hannon street or not. In January and February I was the general manager of the Skaneateles water works, the superintendent used to consult me sometimes and I gave him directions from time to time. I knew of this letter of Feb. 24, written by Mr. Hawley, in which he stated, I give you formal notice that the hydrants have been closed, at the time it was written, I think. Burton colle-ts the rents now; he has got charge of the books he keeps, not the books of the company. I have none. The treasurer has. She is M. M. Hawley of Philadelphia. The books were sent away from Skaneateles long ago, two or three years ago. I don't think the books have been in Skaneateles since 1890 or 1891. When the increase of capital stock was made they had a meeting in Skaneateles and came up and brought the books with them, I think. At the time they increased the capital stock I can't tell you who was there. I think a good many votes were cast by proxy. We had a quorum. I couldn't tell you who own the bonds of this concern now. I don't know the owner of a single bond. I have heard Mr. Hawley say his wife owned a $500 bond. I haven't heard him say he owned a majority of the bonds. I don't know what the gross receipts were last year, or the year before except from an examination of

53 the books kept by Mr. Burton. I have examined those books for that purpose. In regard to the interest on these bonds I know nothing up to what time the interest has been paid excepting by hearsay. I have sometimes provided means for the payment. The receipts are sent to the treasurer at Philadelphia. I don't know the actual cost of construction. There are 40 hydrants in the plant. M. M. Hawley is at present the treasurer, daughter of Joseph W. Hawley. I should think she had been about two years. At the time this contract expired Feb. 1, 1896, Charles E. Barrow, Joseph W. Hawley, — M. M. Hawley were trustees; I couldn't tell the

others. I know of no other members residents of Skaneateles that were trustees at that time. A majority of the trustees at that time were non-residents of the State, and a majority of the capital stock was then owned by non-residents of the State. I have no knowledge of the number of bonds held by residents of this State.

Q. Bonds were issued to the Pipe Line Company in Pennsylvania and sold to them?

A. No; well, yes; sold them to the trust company.

Q. Well, that was another Pennsylvania concern?

A. Yes.

As far as I have been informed they circulated to some people in this State. As I understand a small amount, in small amounts at all events. I think I knew of this letter of May 27, 1896, at
54 or about the time it was written. I think we had some correspondence about it and agreed upon it. I knew that such a letter was to be sent I believe. I never knew of the letter of April 6. I think I had a talk or correspondence with Mr. Hawley before the letter of Jan. 2 was written. I think it was written under my advice or with my approval.

Being re-examined by Mr. Hawley, he testified:

There have never been any breaks in this pipe that is laid in Skaneateles, nor leaks except when they have been broken by somebody else. This system was arranged so that in case of fire we pump directly into the mains so as to have direct pressure from the pump. There was a communication between the headquarters of the fire department and the public station, telephone or something of that sort. So that in case of fire we immediately get the direct pressure of the pumps whether the standpipe is full or not. So far as my information goes no complaint was ever made in regard to its adequacy.

The nature of the plant that is being constructed is, they construct a reservoir instead of a standpipe and the reservoir as constructed, it is not at as great an elevation as the standpipe. That reservoir is constructed on an elevation upon the lake shore, somewhat further from the lake shore than the standpipe at the present time. I
55 can't tell how much further, but a quarter of a mile I should think, they have dug a well, it is called a well upon the shore of the lake. Water reaches the well by percolation from the lake, and the water is to be pumped from this well to the reservoir and distributed through iron pipes instead of cement pipes. The well is situated on the south side of Genesee street about 400 feet west of the outlet at the north end of the lake and between the west shore and the riprap dam, extending out into the lake upon the east side. The depth of it I couldn't tell; I couldn't tell the diameter. It is the same water, water from Skaneateles lake as we have there. The water is taken from Skaneateles lake.

Plaintiff rests.

The defendants moved to dismiss the complaint on the ground that plaintiff has failed to prove a cause of action, and also upon the ground that the plaintiff is incorporated under an act which

provides they may take water from other sources and feeders than the reservoir of the Erie canal, and that Skaneateles lake is one of such reservoirs.

Motion denied.

Mr. Tracy, for the defendants, offered in evidence at a meeting held June 29, 1843, a certified copy of a proceeding of the canal board.

56 The plaintiff objected to the reception of the paper as being immaterial, irrelevant and incompetent. The objection was overruled. The plaintiff excepted.

The paper was read in evidence and is as follows:

"At a meeting of the canal board, held June 29, 1843, present, Messrs. Earll, Jones, Enos, Little, Farrington, Barker and Flagg.

"The canal commissioners having represented to the canal board that the supply of water from the present feeders from that portion of the Erie canal extending from the lock at Geddes to the Seneca River lock at Montezuma, and upon as much of the Cayuga and Seneca canal as is located between the Erie canal at Montezuma and the Seneca river and the Cayuga lake is found to be insufficient for the purpose of navigation. And the canal commissioners having also further represented to the canal board that the deficiency of said supply may be obtained from the Skaneateles lake at a less expense to the State than the same can be obtained elsewhere, and having caused the necessary surveys and levels to be taken and accurate drafts, plans and maps of the contemplated improvement, together with the estimate and minute details of the probable expense to be incurred thereby to be made and submitted to the canal board, which estimated expenses does not exceed the sum of thirty thousand dollars, therefore, is was,

57 "Resolved, That the waters of the Skaneateles lake and the outlet of the same be and they are hereby appropriated to the use of the public for reservoir and feeder to the Erie canal.

"Resolved, That the canal commissioners be directed to make the improvements necessary to carry the above resolution into effect."

The defendant- then offered in evidence the proceedings of the canal board May 16, 1827.

Objected to upon the ground that it was incompetent, immaterial, improper and irrelevant by the plaintiff. The objection was overruled, and the plaintiff excepted.

The same was then read in evidence, and was as follows:

"At a meeting of the canal board held; 6 May, 1827, 9 o'clock a. m.; present St. Van Rensselaer, president of the board of canal commissioners; Nathaniel Pitcher, lt. governor; S. Young; William C. Bouck, H. Seymour, canal commissioners; S. De Witt, surveyor general; A. C. Flagg, secretary of state; A. Keyser, treasurer; William L. March, comptroller.

"Resolved, That the canal commissioners be and they are hereby authorized to construct a dam across the outlet of the Skaneateles lake to supply the Jordan feeder."

Defendant- next offered proceedings of canal board of March 13, 1833.

58 Plaintiff objected on the same ground as before. The objection was overruled; and the plaintiff excepted.

The proceedings were received in evidence and were as follows:

"Present, Samuel Young, canal commissioner, president *pro tem.;* William S. Bouck (ditto); Jonas Earll, Jr., (ditto); Azariah C. Flagg comptroller; John A. Dix, secretary of State; Green C. Bronson attorney general; Abraham A. Keyser, treasurer.

"Resolved, That the canal commissioners be directed to make an improvement in the Skaneateles creek feeder to the Erie canal in the county of Onondaga, by filling up the sinks in the bed of said creek, or by carrying the water past said sinks in raceways for the purpose of increasing the quantity of water in said feeder where it enters said canal."

The defendant- next offered in evidence the proceedings of the board of canal commissioners on the 6th day of September, 1842.

The same was objected to as being incompetent, immaterial and irrelevant. The objection was overruled; and the plaintiff excepted.

The same was read in evidence and was as follows:

"At a meeting of the board of canal commissioners held at the canal department in the city of Albany on the 6th day of

59 September, 1842. Present: Jonas Earll, Daniel P. Bissell, Benjamin Enos and George W. Little.

"Whereas, it has been found that the supply of water from the present feeders upon that portion of the Erie canal included between the lock at Geddes and the Seneca River lock at Montezuma; also the Cayuga and Seneca canal from Montezuma to the Seneca river and Cayuga lake is insufficient for the purposes of navigation; and

"Whereas, it appears from a report of Orville W. Childs, the chief engineer in the employ of the State, bearing date January 6th, 1842, that the remainder of the required supply of water for that portion of the Erie canal above mentioned may be obtained from the Skaneateles lake and the outlet thereof with more economy than from other sources, it was therefore

"Resolved, That the waters of the Skaneateles lake and outlet be and the same are hereby appropriated to the public use for a reservoir and feeder to the Erie canal.

"Resolved, That the plan upon which it is proposed to construct such feeder, together with the surveys, levels and estimates of the expense be submitted to the canal board for their approbation pursuant to the provisions of the 17th and 18th sections of article 2, title 9, chapter 9 of the first part of the Revised Statutes.

"GEORGE W. LITTLE, *Secretary.*"

60 Defendant- next offered in evidence proceedings of the canal board on the 6th day of September, 1842.

The same were objected to upon the same grounds as before by

the plaintiff. The objection was overruled, and the plaintiff excepted.

The proceedings were read in evidence, and were as follows:

"At a meeting of the canal board, 9 o'clock a. m., September 6, 1842. Present: Messrs. Earll, Flagg, Farrington, Jones, Bissell, Enos and Little.

"The canal commissioners having represented to the canal board that the supply of water from the present feeders upon that portion of the Erie canal extending from the lock at Geddes to the Seneca River lock at Montezuma, and upon so much of the Cayuga and Seneca canal as is included between the Erie canal at Montezuma and the Seneca river and Cayuga lake is found to be insufficient for the purposes of navigation. And the canal commissioners having also further represented to the canal board that the deficiency of said supply may be obtained from the Skaneateles lake at a less expense to the State than the same can be obtained elsewhere And the said canal commissioners having appropriated the waters of the aforesaid lake and outlet to the use of the public as a reservoir and feeder to the Erie canal, and having caused the necessary
61 surveys and levels to be taken and accurate draft, plans and maps of the contemplated improvement, together with an estimate in minute detail of the probable expense to be incurred thereby, to be made, from which estimate it appears the expense to be incurred is $14,927.55, all of which said commissioners having submitted to the said board for their approbation. Thereupon it was

"Resolved, That the canal commissioners be directed to construct a reservoir and feeder of the Skaneateles lake and outlet by means of cutting down the outlet thereof in the manner following, to wit:

"At a point immediately below the present dam the cut shall have a depth of 6 feet below the surface of the stream and shall extend down the outlet a distance of 123 chains, going to the bottom an inclination of $\frac{27}{100}$ of a foot per chain, and a width at the upper end of 21 feet, and at the lower end a width of 25 feet. A cut extending from the upper side of the present dam 8 chains into the lake shall also be so excavated as to furnish 7 feet depth of water measuring from the surface of high water as indicated by a marked stone monument situated at the west side of the outlet near the southwest wing of the turnpike bridge crossing said outlet. The bottom of said cut to be horizontal and shall have a width of 35 feet with sides sloping as 2 to 1. Gates of cast iron by which the flow of the water from the reservoir may be regulated shall be placed in a framework of timber and plank, with suitable
62 abutments of stone masonry laid in hydraulic cement. The gates to be placed sufficiently low to admit of drawing five feet in depth of the water from the whole surface of the reservoir.

"It is also resolved that the acting canal commissioner to whom the execution of the above work is committed is hereby authorized to make such alterations in the plans of constructing the aforesaid reservoir as he shall deem the interests of the State to require.

"Resolved, That before the said commissioner proceeds to the

construction of such reservoir and feeder, the said commissioner shall make such arrangements with the owners of land and water power on the waters appropriated as shall secure the State from all claims for damages arising from such appropriation."

Mr. TRACY: Now it is admitted, Mr. Barrow, that the plans and maps referred to in this resolution were made?

Mr. BARROW: No, that was never carried out at all.

Mr. TRACY: Do you admit that they constructed a reservoir, or made improvements there so as to make it a reservoir for the canal?

Mr. BARROW: No.

Mr. Tracy for the defendants next offered in evidence proceedings of the board of canal commissioners of June 30, 1843.

63 Same were objected to as before. The objection was overruled and the plaintiff excepted.

The same were then read in evidence and were as follows:

"At a meeting of the board of canal commissioners, held at the State hall in the city of Albany on the 30th day of June, 1843. Present, Messrs. Earll, Bissell, Enos and Little.

"Resolved, That this board in compliance with a resolution of the canal board of the 29th inst. make the improvements necessary to carry into effect the resolution of said canal board of the same date appropriating to the use of the public the waters of the Skaneateles lake, and the outlet thereof, as a reservoir and feeder to the Erie canal."

JOHN A. BURTON, being called by the defendant- and sworn, being examined by Mr. Tracy, testified as follows:

I am the superintendent of the Skaneateles water works; have been ever since the plant started six years ago last November. I have here the books showing the people taking water; the day book and ledger showing the collections and deposits. Nothing in the books except to show the rents received for the water. At the present time there are 130 actual takers, 152 numbers on the books, but 20 of them are cut off, I think, dropped off. Haven't been

64 in the annual rental or since this action started. Probably half a dozen I think dropped off this summer. The others before that. Some people moved out of town and others stopped using the sprinklers. The total rents received since the village stopped taking about $1,800. When the village took $3,000; the village took $1,200. I have never seen the stock books of the company and know nothing about them, or of them being in Skaneateles.

Being cross-examined, he testified:

I began in 1890 to act for this company and have acted ever since. For the first three years I did not keep the books, but the income of course showed very small, had to start in with nothing and worked up gradually. The income of the year ending 1895, in comparison with previous years was about the same. The income of 1894, including village rental is $2,200. In 1895, about $2,600. The expenses excluding the interest upon the bonds for 1894, were about

$1,000. They varied maybe a few dollars more. For 1895 about the same. For 1896 I don't think it varies a great deal, just about the same, about $1,000 a year. That includes my salary and coal. My salary in 1894 was $60 a month.

Re-examined by Mr. TRACY, he testified:

I didn't mean to be understood that the gross receipts in 1896, were $2,900 because the village shut off the water. They are
65 about $1,800. What the village formerly paid was $1,200. Our receipts ran up $300 between 1895 and 1896. This includes a month's hydrant rental, one month's hydrant rental for February, 1896. That makes about $1,700 for 1896, $1,800 with that month's rental. The number of houses in Skaneateles on our pipe line is 310. 130 takers now, 150 on the books altogether. This statement of houses includes some of the blocks. The Eckett block is included in that. All the blocks. That is there were so many houses on our line. That included all the blocks there is. More than one taker in some of the blocks, but now the Eckett block pays for them all. Dillon is a separate taker and the postmaster is a separate taker. So there are three takers in the Eckett block. No more in any other block.

EDWIN WHITING, being called by the defendant-, and sworn, examined by Mr. Tracy, testified as follows:

I reside in the village of Skaneateles. Am one of the trustees of the village; have been a year and a half, a little over, nearly two years. The election was held in the engine-house, across the hall or next to a room called the trustee room. There was a hall between the two. The village elections generally have been
66 held in the engine-room since booths were adopted. It is larger than the trustees' room; and after the law was adopted requiring booths to be used it was found the trustees' room was rather small for the purpose, and after that elections were held in the engine-room and have been ever since, village elections. I was one of the trustees of the village when this contract expired in February, 1896, with the plaintiff. Up to that time there had been no suggestion so far as I know that the village should own water works; after the plaintiff demanded $50 a hydrant this whole agitation arose.

By Mr. TRACY:

Q. Was there any suggestion up to the time of the termination of this contract, or up to the time of the receipt of this letter from the plaintiff demanding $50 a hydrant, was there any suggestion, up to that time, that the contract should not be renewed at its expiration?

Objected to by the plaintiff as incompetent and improper. Objection was overruled, and the plaintiff excepted.

A. There was none.

I saw the letters of Mr. Hawley that have been read in evidence

about the time of their receipt. That letter of Jan. 2, and another of Jan. 21, 1896. And after the receipt of those letters I learned that the hydrants had been cut off. I could not give the date when.
I think it was shortly after Feb. 1, 1896. Shortly after the
67 expiration of the contract, within a few days. And I subsequently acted on that belief.

Being cross-examined by Mr. BARROW, he testified:

I heard that the hydrants were cut off about Feb. 10; could not give you the correct date. I don't remember who told me. I can't name any person from whom I received that information. One reason how I learned it I saw Burton take something out of the hydrant; out of two or three in front of my place of business there that I saw. There are two or three right there within 40 rods. I could not tell you what I saw him take out for I don't know what they call it, looked like some pieces of iron, nearer round than long; might have been two or three inches in diameter. I don't know what part of the hydrant that came from. I saw him take the nut off the top of the hydrant and take something out and put it back again. I couldn't state positively that what he took out from the inside was a piece of iron about three inches in diameter. I saw that done to two hydrants at least. I didn't give any date when that was done, about the 10th of February; I did not see him put them back again. I heard that he put it back. I couldn't tell
when I heard that. It was after this action was commenced.
68 I didn't pay any attention to the hydrants when the nut on the top was removed from them. I don't know but that he put the nut back the same day I saw him take it out. The trustees of the village of Skaneateles never offered to renew the existing contract at the rate of $40 per hydrant that I know of. I don't think the trustees of the village of Skaneateles ever asked the Skaneateles Water Works Company to furnish water to the village at the rate of $40 per hydrant. They did ask the water company to furnish water to the village at $30 a hydrant. It was by letter. I couldn't tell you whether it was signed by the president or clerk. I think the village passed a resolution directing that offer to be made about the first of February. I could not give you the date. I have a distinct recollection of it only as I have stated. I have a distinct recollection that they did pass such a resolution. I can't give the wording of it. I think it does appear upon the minutes. If I hadn't thought it did appear upon the record I should not have stated so. I think they passed or adopted such a resolution because I think it appears upon the record. No one has told me that there is such a resolution upon the records. I learned that it appeared upon the record from memory. We are supposed to have a clerk who keeps all
the records of the proceedings. In the village building there
69 are three rooms I think. The building is called "engine-house." In the engine-house there is a room known as the trustees' room and there is a room known as the fireman's room. This meeting on the 9th of May was not held in the trustees' room; the 9th of May the meeting was held in the fireman's room, 3 or 4

elections have been held in the room; no elections have been held in the trustees' room since I have been on the board. There have before. I recollect the meeting held in the trustees' room. I think that was in 1894. Now this meeting that I have been speaking about was held upon the 9th of May, 1896.

Redirect examination by Mr. TRACY:

In regard to those things they took off the hydrants, I don't know what they call them.

Q. State whether or not at a meeting of the board of trustees at which the president of the village was present the question was discussed as to offering to make a contract for the period of a year at the rate of $30 a hydrant.

Objected to upon the ground that it is incompetent, immaterial and irrelevant.

Objection overruled, and the plaintiff excepted.

Q. State whether or not at that meeting it was agreed that
70 the president should communicate the proposition to the plaintiff, The Water Works Company.

A. It was.

When I testified this morning that a resolution was passed in reference to that it is the same thing and I supposed that a resolution to that effect had been passed.

Recross-examination by Mr. BARROW:

I said that in pursuance of a talk we had in the board of trustees, Mr. Leslie communicated with the water company. I don't think I saw his communication. I know that he communicated merely by the resolution itself that was passed by the board. There was a resolution passed by the board. And I inferred that because the resolution was passed Mr. Leslie did communicate, that is all I know about it of my own knowledge. I have seen some of the communications which passed between Leslie and the water company.

Redirect examination by Mr. DILLON:

The resolution that I referred to in answer to Mr. Barrow's question is the one in which it was passed by the board of trustees authorizing Mr. Leslie to communicate the same.

71 Q. Now, then as a matter of fact there was no resolution passed by the board by which they offered $30 a hydrant for the continuation of the contract for one year, and that was merely talked of among the members of the board at a meeting that is a fact, is it not?

A. That is the time I have reference to.

Recross-examination by Mr. BARROW:

Q. What was the resolution that you referred to that was passed?

A. It was talked over only once.

The formal resolution or any way you are a mind to put it, was only talked of by the board only talked just one time. I didn't say any such thing as that they adopted a resolution.

Q. Didn't you tell Mr. Dillon just now?

A. Passed by the board, it was merely talked over by the board and the president did write that letter.

By Mr. BARROW:

I can't tell when the meeting was when this was talked over.

JOHN A. BURTON, recalled, examined by Mr. Tracy for the defendants.

Nothing was done to the hydrants in Skaneateles after the 1st of February until the 15th. Then I took the nuts off the spindles of
20 of them. There are forty of them in the village. I did
72 that by direction of the plaintiff the water company. The
spindle is the rod that goes right through here. (Illustrating on an illustration of a hydrant.) There is a nut on top there, a small nut indicated by the letter "L." This is a separate part from the spindle, the spindle goes right down through here (indicating) through the valve up through the box. That (indicating) indicates the nut on top of the spindle. That nut just drops loose onto the spindle. By removing that nut here it don't disappear from view, it leaves that space there. Taking off the top nut removes the nut. To open the hydrant you have a wrench that sets down over this nut. The nut comes through the top bolt of the hydrant; that turns the spindle that opens the valve at the bottom. When that is removed the hydrant can't be opened by use of a cast-iron wrench, it can by a monkey-wrench. There was something in possession of the village that could open that hydrant, any form of a monkey-wrench can open it. I shouldn't think one would have to know about the construction of a hydrant to know what effect it would have to use a monkey-wrench. I should judge that any man could see that a change had been made in the hydrant. Something taken out. Any man could open it with a monkey-wrench. They would have to take off that bolt and then put the monkey-wrench on to that square part of the spindle. Twenty of these were removed, distributed almost all over the village down through Genessee street,
73 all on Genessee street except the hydrant up at Mr. Barrow's
house; all on George street excepting the hydrant up at Mr. Shepperd's house; all on West Lake street except the hydrant in front of Edward C. Hall's house. The hydrant opposite Mr. Lyon's house was not dismantled. All on Syracuse street except in front of John Barrow's house. You notice that there was a hydrant left on each street, not opposite the houses of some promoter of this water scheme; I haven't any such instruction. There is some of the hydrants you can't take the nuts off, that the nuts is firm on the spindles. I didn't mean to say that I took them off of all the hydrants that I could. I could have taken them off twenty more. I mean to say that I was not instructed not to take the nuts off from those hydrants, I used my own discretion about that. I didn't take

them off of all that I could excepting those interested in the water company. I gave no thought to any such thing as that. There was one taken off down to the bolt shop. Mr. Barrow and Mr. Shepperd aren't interested in that concern. I am not acquainted with the bolt shop. My object in taking those nuts off was I was told to take them off. I should judge it was to scare the people if anything. It wasn't because they could not be used, because they can use them just the same. I presume the idea was to make the people believe they could not be used, that was my idea. Anybody could see that they could be used. I can't answer whether unless they un-

74 derstood the use of a hydrant and the effect of a monkey-wrench on the top of that he wouldn't understand the hydrants could be used. And I should say that I believe that unless this change should be made they would think it could be used. The pressure can't be reduced on the hydrants. There is no such thing as reducing the pressure unless we stop pumping altogether. The more water you get into the standpipe the greater the pressure is. If we didn't have the standpipe over a third full the pressure would be reduced very little, hardly any. It would be reduced from 80 lbs. to about 74. It would be reduced about 8 lbs. to the square inch. Under the contract I used to keep the standpipe nearly filled with water, same as I always have. I couldn't keep it full. Filled it every day, have done so for about two years. I have filled it every day for two years, and have done so since the contract expired, usually pumped every forenoon. I will swear I filled it every day. I swear to that; sometimes twice a day. Have got an elevator gu*a*ge. I say the pressure has not been less since the contract expired, nor at any time during the summer. They always have water in the standpipe pumped once a day and sometimes twice a day. It sometimes happens that the standpipe is empty some days more than others. You know they use more water some days than others. Some days we had to pump it full twice. There was not quite a number of days after the contract expired that we didn't

75 pump the standpipe full, always pumped it full. It is not a fact that the pressure has been considerably reduced to consumers, and that if the consumers found there was less pressure of the water it don't tend to show that there was less water in the standpipe. It would show perhaps that a good many were using it at the same time, that would reduce your pressure. There is no other explanation that I can give. You may have twenty feet of water in the standpipe and all the hydrants be shut off and every faucet shut off and it would show a big pressure on the high points. We can't cut the hydrants off. There is a hydrant down at the railroad shop that they use for water tanks to engines, tenders and there is a motor in the Free Press office using a great deal of water. The hydrants are never used except for sprinkling or in case of fire. So the fact the hydrants were not used would not make any difference in the pressure. The only reason why there should be less pressure excepting lower water in the standpipe was more water being used by the consumers.

Recross-examination by Mr. BARROW:

So far as I know there was no difference in the pressure after this contract had expired from what it had been before. Pumped just the same, filled her up just the same. And the spindles off these hydrants were none of them removed, you couldn't remove them, they weren't removed and the pressure was always the same
76 since the contract as before so far as I know upon the hydrants. And during this time since the contract has expired I furnished the same water for the motor that requires such an amount of pressure. I have a letter from the office from Mr. Hawley the president, instructing me to take those nuts off. They were subsequently replaced; it was some time in the early part of June, and I can't swear just when. That is the best of my recollection.

Re-examination by Mr. TRACY:

That was after the village had voted for the water tax that I put the nuts on. When I took the nuts off to make the people think the hydrants could not be used I could not tell you what impression I created. As far as I know I suppose they believed they could not be used.

Q. And you never undertook to undeceive them?

A. I had nothing to say either way; it wasn't my place.

Q. And when you put the nuts on did you tell anybody that you had done so?

A. They saw me working on them. You can't do anything there without they see you.

Q. Who saw you, Barrow?

A. Well that is a question. Mr. Barrow saw me. I don't believe I have got the letter of Mr. Hawley telling me to take those nuts off. I never keep any of his letters, never bother. None of my correspondence with Mr. Hawley has been kept. I simply
77 obey orders as soon as I got them and then destroyed them, and I obeyed that order.

Q. How much water do you pump every day in the summer?

A. Well I have pumped 80,000 gallons in one day. The standpipe holds 80,000, about 80,000, not quite, 78 and a fraction. It is 40 feet high, 18 feet in diameter and holds nearly 30,000 to the foot. I could not tell you how many days I would pump 80,000 during the summer. Often I had to pump twice a day, then other days I pumped 80,000. That was for street and lawn sprinkling and waste in general. When the street sprinkling commenced I had to prepare the hydrants so they could draw water. They went to me and told me they had to be fixed, Mr. Prentice did that. Well, I think it was Richards came and told me. I never figured up what the Free Press office uses. There is no meter there, never was. I don't believe I could answer how much the railroad company uses. They use it for engines and sprinkling coal and washing cars. They run two engines in the summer time, one in the winter.

WARREN B. DE WITT, recalled by the defendant-, and examined by Mr. Tracy:

78 The ballots were printed "For the water tax" and "Against the water tax." Twenty-seven ballots were cast against the water tax; 118 were cast for the water tax. Ballots were printed, in the form you now show me.

Form of ballot offered in evidence, received and marked Ex. 36 and hereto annexed.

After the ballots were counted the result of the election was announced, declared in favor of the water tax, and it stated how many had been cast for and how many against. (Witness shown paper.) I found this paper among my records in the clerk's office. I know a number of the persons whose names are signed to these papers to be residents of the village, a number of them are prominent citizens there.

Paper offered in evidence by the defendant; received and marked Ex. 37.

Only one person was challenged during this election. He didn't swear in his vote or attempt to do so. He was challenged upon the ground that he was a non-resident of the village and therefore not a voter of the village.

79 EDWARD E. ECKETT sworn.

To Mr. DILLON:

I attended the public meeting we had at Library hall. Mr. Barrow was one of the principal speakers. I heard him state upon the platform that he had $5,000 in that of his own money. He says, I have $5,000 of my own money in that water plant, and I have put my hand down in my pocket and paid my share of the deficiency every year.

By Mr. BARROW:

I have not been one of the most active promoters of this new scheme of municipal water works in Skaneateles. I knew nothing about their appointing me a water commissioner until I heard that they were going to; came and asked me if I would have any objection. I told them I was willing to do anything that would be a benefit to the village. I have a feeling that I want to do all I can for the interests of the village and not against. My feeling against the old water company has not been a very bitter one. I am a great taker of water up there. But when they wanted to do what I didn't think was right, then, of course, I didn't—I went with a majority of the people. Since then I have done my duty as water commissioner for the village. I don't know that I have been any more active than the rest of the board. I might say I have been very active. I have not expressed myself against the
80 old company in a very bitter way. Against its officers I might have expressed my feeling, the way I felt in regard to

some of them that got the franchise; because I have always considered that they got the franchise renewed in anything but an honorable way. They had a special meeting when the citizens and tax-payers were getting up a petition to present to the trustees at that time advising them not to renew that franchise. I say that I thought it was not an honorable way of getting that franchise renewed, when you called a special meeting with only three trustees present, in the absence of the president, your brother one of the trustees, only just two present, and in the absence of the president of the village and the clerk, to have a special meeting and get that franchise renewed—I didn't think that was an honorable way of doing it.

Q. The whole board of trustees voted for it?

A. The way I have seen it recorded, the president was not present, nor the clerk. The clerk don't vote. But I say if it was done it ought to have been taken up and had a full board. I didn't think it was an honorable way. If it had been done in a reasonable way it would have been done at one of the regular meetings of the board.

To Mr. DILLON:

I have understood that Mr. Shepard, the other trustee, was a business partner and a relative of Mr. Hall, one of the
81 promoters of this thing—going around with a paper under his arm getting people to sign at the beginning of this.

GEORGE BARROW, recalled and examined by Mr. Dillon:

I don't know whether or not the old plant could have been purchased for $30,000.

WARREN B. DE WITT, being recalled and examined by Mr. Tracy, testified:

There was a contract made as I understand, that has been produced here, for the construction of the new water works. Subsequently there was an amendment of that contract signed by the parties; it is at Skaneateles I think. The well has been constructed by day labor. There was no contract for it. There was an estimate of its cost in writing. The contractor made it. I have got it at the office. The suction pipe to the well shows in the first contract. The suction pipe from the well to the pump-house was not in the original contract. That work has not been done yet, no, sir. No
82 contract has been made for it. There is an estimate of its cost put in by the contractor. He has offered to do the work for a certain price. I think the estimate is in my office. The board made a sort of estimate on it. I haven't it in writing but I think one of the board has. I know about what it was I think. I think Mr. Hall has it. The present idea is to take the water through a well. Running out into the lake from the pump-house, the engineer estimates the distance to be about 2,000 feet; that is if we run into the lake instead of taking the water in the well. That is pro-

vided for in the contract that has been put in evidence; the rate that is to be paid a foot.

Being cross-examined, he testified:

The original construction contract was amended; that is a subsequent contract was made afterward; there was a change. That contract was in writing signed by both parties. It is in my possession, or the possession of the village, this amended contract. The well was constructed, or is partly constructed, by day labor. I mean by that there wasn't any particular contract for it. The contractor did it by day labor and kept track of it. The contractor was
83 to perform the work required in the construction of this well by hiring day laborers to do it, and it was to be charged by him to the water board. That was according to the first contract. No contract price upon it. No price put upon the day labor that I know of. The engineer was not to receive compensation for overseeing that part of the work that I know of. I suppose he did oversee it. I don't suppose he employed labor. I suppose Mr. Marsden employed it and paid for it. The work was done under Mr. Marsden's supervision, I suppose, the contractor. I don't know whether it was done under anybody's supervision. As to its being done under Mr. Hall's supervision, like everything else he was the committee to look after that particular part of the work. I couldn't swear he was there every day. He didn't employ the labor that I know of. Nor the machinery that was used there. I don't think there was a contract for the construction of this well. There was no contract. I have no personal knowledge and didn't hear any conversation in regard to the construction of the well between the commissioners and engineer at any time, that I can remember of now. The lake I should think is forty feet from where the well is constructed.

To the REFEREE:

The well was put there to get water from.

I couldn't say whether it was put there for the purpose of getting water from the lake or not. Some of them don't think it
84 comes from the lake at all. When they put it there they thought they could get a supply of water; they don't hold it is from the lake. I know at the time the Syracuse people put their pipes in there I saw gravel veins running in from the lake shore near by where this well is situated, in under the road. I don't know whether it run in from the lake though. I observed what came through at that time. The water came in from all directions near by. I was working down Railroad street then and I wasn't there but once in a while. If I had a chance I ran over there, not very often. I have been there. And I observed then that great quantities of water came to what was their well-house, which was right on the opposite side of the highway, so that they had to put in large pumps to pump it out. At the time this idea of putting a well at that point was discussed I heard some discussion about it, I presume. I don't think I heard them say that by put-

ting a well there they could get water from the lake. I don't think they said they could get water from the lake. I don't remember what I did hear them say. I couldn't tell now what they did say. I don't think they said they could get water from the lake. They said that would act as a filter, coming through the gravel. The water coming through the gravel, the gravel would act as a filter. There was some talk about the gravel, that is all about that I remember about it. They thought the gravel must be around there anyway. They said there was
85 gravel there then and there must be there now, when the Syracuse people laid their pipe and there must be there now. I didn't hear anything said about the ability to get a sufficient supply of water in that well because it would come from the lake. They thought they could get plenty of water there.

To the REFEREE:

I don't know where else it could come from if not from the lake. There are wells down the street a quarter of a mile that when you draw from that well you draw from those wells all around there. My brother has got a big well down in his barn, away down below there, and you draw from this well and it will draw back from there; so I don't see how it comes from the lake any more than lots of other places.

To Mr. BARROW:

The land slopes from this point to the north, begins to slope almost immediately. The street lies between, and from the street there is quite a rapid slope to the north a few feet slope to the creek. The creek below the dam about four hundred feet away isn't very much below the lake surface, eight or ten feet perhaps in low water. In high water it would be five or six feet more; depends on how much water there is in the lake. The first talk I heard about the construction of this new system of water works was to put a pipe into the lake. The contract shows that, I believe. And afterward that talk resulted in talk regarding a well. The well is forty
86 feet from the north end of the lake, about that from the end of the park; of course the park extends out into the lake, about forty feet from the shore of the lake. Our pump-house is placed 275 feet north of that and across the highway, and along near the outlet of the lake, about half way between the lake and outlet, it must be about 250 or 275 feet from the outlet. I suppose the contractor pays the laborers who perform the work upon the well, John Marsden, of Utica, N. Y. We advertised the letting of the contract, had plans and specifications. I think there were eight bidders. I think I have the original bids, most of them. I don't know as I have all of them. I couldn't say I can get all of them; I can get part of them anyway. I can't remember the names of all the different bidders from memory; I can give you what I remember. N. B. Birdseye of Fayetteville, N. Y.; John Marsden; Dunfee & Belden & Dwyre of Syracuse; Eniton & Co.; D. G. Grannis; a man by the name of Thomas Regan & Co., I think; Rudiger;

Harter & Lewis. That is all I guess. I will produce the bids and records of them.

To Mr. TRACY:

There was no price fixed for this well. He was simply to go on and do the work. That is what I mean by its being done by day labor. I suppose what we would call a force account. The well is completed all but the cover, cap or stone or whatever it is. I should think it had been so since the 2d or 3d of January, 1897.
87 The engineer was there at the time it was being built, superintending the work.

To Mr. DILLON:

The land immediately north of the lake there is a stratum of clay there. I don't know that it slopes to the lake and forms a basin. I couldn't tell where it goes to. I know it slants that way, but I couldn't tell where it goes to. When they struck water at the well as I noticed I thought it came from the northwest side more. The board appoints an individual to take charge of certain parts of the work. Mr. Hall was appointed a committee to take charge of the well. Whatever directions the contractor desired he could get from Mr. Hall instead of going before the whole board. There was an analysis of the water of the lake made and from this well. Previous to the beginning of this well the water board had a driven well and a pump attached to it; and a sample of that water taken and a sample from the lake was taken to Cornell University for analysis. I couldn't remember what it was. I have it in my possession, but not here.

To Mr. BARROW:

This well was to be constructed by day labor but there was no contract price fixed for the well completed. It was to be constructed under the supervisiou of the engineer, I believe. The engineer was employed by the month so he didn't get anything extra for overseeing that; he didn't that I know of. If he did it seems we would have known it. There was nothing said about days' labor in
88 the contract for the well, just a force contract. By a force contract I mean his contract provides for a thing of that nature, or the original contract provided for it. That is all I know about it. There is some provision in the contract. I mean when I say force contract, in the written contract as I understand it.

The plaintiff offered in evidence consent of the superintendent of public works, which was received in evidence, marked Ex. 37, and is as follows:

OFFICE OF SUPERINTENDENT OF PUBLIC WORKS,
ALBANY, *Dec.* 16, 1887.

"Whereas the Skaneateles Water Works Company, a corporation duly formed and organized under and by virtue of the laws of this State, has made application for permission to take water from Skan-

eateles lake (said lake being a State reservoir for canal purposes) to supply the village of Skaneateles with water, and for no other purpose, and have filed in this office maps, plans, and profile of the route designated for their water pipes:

"Therefore, permission is hereby granted to said Skaneateles Water Works Company to take water direct from said lake through a pipe not to exceed eight (8) inches in diameter, by pumps from a pumping station, upon the following conditions and restrictions:

"1st. The water shall be so taken from said lake by pipes, from a pumping station as stated above, and shall be used for sup-
89 plying the inhabitants of the village of Skaneateles with water, and for no other purpose. All surplus water and water not used by the said village of Skaneateles shall be returned and conducted into the feeder running from said lake to the Erie canal; and all costs and expense for the construction and maintenance of said water works shall be paid by said Skaneateles Water Works Company.

"2d. All work authorized by this permit shall be done under the supervision of the superintendent of public works or inspectors to be appointed by him; and the salary of inspectors for said work to be selected by the superintendent of public works shall be paid by said Skaneateles Water Works Company; and the work shall be done at such times as the superintendent of public works shall direct, and so as not to interfere with the free and perfect use of said lake as a reservoir for canal purposes.

"3d. Said Skaneateles Water Works Company shall be held liable for and shall pay all damages that may occur or arise, either to the State or to individuals, in consequence of the construction and maintenance of said water works.

"4th. The superintendent of public works reserves the right at any time to revoke and annul this permit and cause said Skaneateles Water Works Company to remove said water works at its own cost and expense from the limits of said lake; also the right on the part of the State of re-entry and reoccupancy of such
90 lands covered by this permit as the free and perfect use of said canal reservoir at any future time may require, or as may be necessary for making any repairs, improvements or alterations in the same.

"5th. An acceptance by said Skaneateles Water Works Company of this permit shall be deemed a covenant for the faithful performance of all the conditions and requirements herein contained.

"In testimony whereof, I have hereunto set my hand and affixed the official seal of said office, the day and year first above named.

"JAMES SHANAHAN,
"*Supt. of Pub. W'ks.*"

CHARLES W. KNIGHT, being called by the defendants and examined by Mr. Dillon, testified as follows:

I reside in Rome, N. Y. My profession is civil engineer, have been engaged 25 years; I am head of the firm known as Stanwix Engineering Company. In 1889 or 1890 we prepared plans and

specifications for the Skaneateles Water Works Company, and made estimates for a plant to be located at Skaneateles village. It was to consist of a pumping plant, taking water from the lake, pumping to a covered enclosed standpipe, and about 29,000 feet of cast-iron mains, with hydrants, valves, &c. We fixed the number of hydrants; there were 46. The pumping station was to consist
91 of three rooms; a room for the pumps, one for the boilers and another for the coal-room; an engineer's cottage; about 600 feet of suction pipe I believe, between 500 and 600 feet. I recollect making the soundings for the suction. I know the plant as constructed.

To Mr. DILLON:

We have made plans and specifications for the construction of a plant at Skaneateles village for the board of water commissioners of that village. And I know the cost and details of the plant.

Q. You may describe what it contains.

The plaintiff objected to the question as incompetent and immaterial; the objection was overruled and the plaintiff excepted.

A. It consists of a pumping station, taking water from a well, and pumping the same to a reservoir and distributing it through cast-iron pipes. There are 58 hydrants that covers all except the minor details of construction.

Q. What is the cost of that?

Objected to as incompetent, immaterial, and irrelevant; received, and the plaintiff excepted.

A. The contracts are in evidence as to that. I haven't it at hand; it is approximately $29,000. That is the estimated cost under the original contract. That included 2,000 feet of suction pipe, I think. From that you want to deduct 500 feet out of the 2,000; so
92 it would be 1,500 feet. There is a reservoir instead of a standpipe. Its capacity I think is 500,000.

(Mr. DILLON: It is 355,000.)

Q. I will ask you if the reservoir is constructed of sufficient capacity to supply this system of water works, in your judgment?

Objected to as immaterial, irrelevant and incompetent and that the witness has already testified that he don't know what its capicity is. Objection overruled and the plaintiff excepted.

A. I think it is ample for all use and fire protection.

I don't know the exact difference in the height of their standpipe and our reservoir.

Q. How far has this plant been constructed both as to material and cost, (Feb. 12, 1897)?

Objected to as incompetent and immaterial; objection overruled and exception to plaintiff.

A. I haven't got with me the details in feet.

The well has been completed; between two and three miles of

pipe laid. I don't recollect the number of hydrants; the reservoir is nearly completed except the gate-house; the pump-house is under way. I think the engine has not been put in. The cost up to Jan. 1, that is our last estimate of the contract work is $12,266.63, and the well $581.92, engineering $625. I don't think there is quite half of it done, about half; there is not quite half of it done.

93 Being cross-examined by Mr. Barrow, he testified:

I think work was commenced upon this recent contract, the last contract, about the 17th October, 1896, 17th or 18th. I can't give you the date when the first pipe was laid. Ground was broken for laying either the last of October or fore part of November; I don't know whether any work had been done at the time of the commencement of this action. The first work was done on the reservoir. The original plan and specifications which were drawn by me for the village provided for an intake pipe running into the lake about 2,000 feet; and that part has been discarded and a well substituted on the shore of the lake; built under my supervision. It was constructed by sinking a brick curbing and pumping out the gravel, sinking it down into the water-bearing gravel. It was the water-bearing gravel through which this well was sunk; and pipes and openings put through the brick wall; so that the water might come through the gravel into this well. These openings stretch up from the bottom up very near 20 feet. No, not so much as that; about 17 or 18 feet, I don't know exactly; all around the well; the same number upon all sides. From recollection I think the depth of the well is about 29 feet. Its diameter is about 8 feet. These openings that I speak of are about an inch by two inches, most of them. There are a great many of them; and a great many pipes.

94 The capacity of that well varies with the material surrounding the well and the amount of water in that material. The capacity of that well to the flow line is about 660 cubic feet. That would be about 5,000 gallons. The flow line varies a little there. It was the line the water rose to when we were constructing the well. It is about 4 feet lower than the level of the lake. At the time we observed the flow line. I did and I did not recommend this change from a suction pipe to a well. I recommended an experiment. I thought it best to make the experiment. I didn't have much hopes of its success. The experiment was made; I don't think I have been called upon to pass. I have never made and recommendation. This well is placed about 60 feet perhaps from the lake shore. The well wasn't substituted for the pipe after an experiment made to determine whether water would come into this well from the lake. The well itself is the experiment. We made no experiment. Oh, there was a little driven well there to be sure. Somebody drove a well down to see if there was water in this gravel, yes. By some members of the board of water commissioners it was not the plan, the idea of the scheme that water would be supplied to this well from the lake itself, but it was my supposition it would come from the lake. I couldn't say what the experiment developed. It is four feet below the level of

the lake and sixty feet away. I couldn't say whether it comes from the lake of not. I heard a good deal about a gravel vein that existed there and caused the Syracuse water board a
95 good deal of trouble, supposed to be full of water. This well was sunk there for the purpose of getting water from the lake. That is what we sunk it for of course; oh, to get water from the lake. It was not expressed as the opinion of the board of water commissioners that it was by percolation. I don't know with the idea that water would come to it, be supplied to it from the lake. I have stated what the idea of the board was; that they would get the water independent of the lake.

Q. Do you think as an engineer that a well dependent simply upon natural surroundings, independent of the lake, of the capacity which you have named as the capacity of this well, is a sufficient supply of water for a village?

A. It depends upon the inflow of the lake; the size of the well has little or nothing to do with it.

Q. Do you think as an engineer that a well dependent simply upon natural surroundings, independent of the lake, of the capacity you have named as the capacity of this well is a sufficient supply of water for the village, under ordinary circumstances, leaving the lake out of consideration?

A. From our tests the three tests?

Q. I am speaking of an ordinary case, not the tests you made here.

A. From our observation of the lay of the land.

Q. Yes; supposing there was no lake there?

A. Oh, I couldn't tell without testing it.

Q. Would you have advised the construction of that well if it had not been in close proximity to the lake?

A. I would not, except from a test.

96 Q. And you had no test?

A. The well itself is a test.

Q. But you had no test before the well was constructed?

A. No; the well was constructed for a test.

Q. You would not have advised even the making of such a test if it had not been in proximity to the lake?

A. If we had no other source of supply we would have to make some tests to determine what our plan would be. Our plan involved a suction pipe into the lake and we substituted this plan of a well for it.

Q. Would you have made that test if that lake had not been in the neighborhoood?

A. Certainly before we would have recommended the line of work we would have had to make a test.

Being re-examined by Mr. Tracy, he testified:

The well was practically completed on Jan. 1; there was a little grading, perhaps half a day's work for two men to do and the covering to be put on, at that time. The cost up to that time was $581.92. The additional cost of grading and putting the cover on might be

$25. There is nothing whatever to prevent, if this well failed, running a suction pipe out into the lake as originally proposed. At an expense based upon our estimate of the original cost of about $2,400 perhaps to go out from there to the extent that we intended going out, 2,000 feet.

97 The well is a brick well built on a shoe. The shoe is made partly of iron and partly of wood; and the shoe itself is bolted to the brick-work on rods run up through the brick-work and anchored in under about six feet. It is built of cement and lowered as we make the excavation and went down; and it tapers slightly from the bottom to the top and drawn in to form a manhole at the top, over which there is to be a cover. As the shoe went down the brick-work was laid on top of it. There were pipes in the brick-work, and also holes left. There were a good many small pipes put in there through the holes, and there were some tiles put in; part of the way it was holes, an inch to two inches, and some places it was tiles. At the time it was completed I can state approximately the amount of water that came into the well. We built a weir and pumped over this weir and we kept a record from day to day of the amount flowing over this weir; and the quantity is about 750,000 gallons in 24 hours. That is a maximum. The original capacity of the pump was 750,000. I know about the amount of water that the village of Skaneateles about 2,000 inhabitants, consumes in 24 hours from experience and observation. I know what is ordinarily consumed. The amount of water that a village of the size of Skaneateles consumes varies greatly; 50 gallons up to 100 *per capita*.

By Mr. BARROW:

98 Q. In your opinion could you have pumped 750,000 gallons in 24 hours from that well if the water had not come to it from the lake?

A. Percolation is very slow, percolation into that well. It may come from the lake. I don't know where else it could come from.

Q. In your opinion could you pump 750,000 gallons of water in 24 hours from this well, unless the water, taking all the surroundings of it, come from the lake?

A. In my opinion could that amount be pumped unless it came from the lake?

Q. Taking all the surroundings there?

A. I hardly think it could; I don't know. It is a question I don't know without more testing than we have done.

Q. Have you any opinion on the subject?

A. I said I don't think it could unless it came from the lake; but I couldn't state positively.

Q. But you don't think it could unless it came from the lake?

A. No, sir.

To Mr. DILLON:

It is here conceded by the plaintiff that the land upon which this

well in question is sunk is owned by the village of Skaneateles, and that that land borders on the lake.

By Mr. TRACY: It is conceded that the land bordering the lake, where the suction pipe would be run into the lake if it was used, is land belonging to the village.

Mr. BARROW: The village owns a park, and this well is upon that park. I should think the frontage of this park on the lake
99 was 200 or 300 feet. It is a strip of land owned by the village on the shore of the lake.

The defendant offered in evidence a certificate from the comptroller's office, which was objected to by the plaintiff as incompetent and immaterial; the objection was overruled; the paper was received in evidence and marked Ex. 38, and is as follows:

"STATE OF NEW YORK, } ss.:
Comptroller's Office, }

"I, James A. Roberts, comptroller of the State of New York, do hereby certify that I have made diligent examination of the minutes of the proceedings of the canal board on file in my office, from August 1st, 1887, to this date for a resolution or authority in writing to the superintendent of public works, purporting to authorize him to consent to the use of the waters of Skaneateles lake by the Skaneateles Water Works Company, the legal custody of which belongs to me, and that said resolution or authority cannot be found.

"In witness whereof I have hereunto set my hand and
[L. S.] official seal this 11th day of February, 1897.

"JAMES A. ROBERTS,
"*Comptroller.*"

Mr. Barrow objected to that part of Ex. No. 38 which states that "the legal custody of which belongs to me." The objection
100 was overruled and the plaintiff excepted.

Defendants here read in evidence from the deposition of E. Norman Leslie, a witness for the defendants taken at his residence in the village of Skaneateles, on February 11th, 1897, as follows, he being unable to attend before the referee on account of sickness.

E. NORMAN LESLIE, being sworn and examined by Mr. Dillon, testified:

I reside in the village of Skaneateles. I think I have resided there over 40 years. At present am president of the village and one of the defendants. I have had some correspondence with J. W. Hawley president of the plaintiff corporation. (A letter dated Medina, Pa., Feb. 7, 1895, was read to witness.) On or about Feb. 5, 1895, I wrote to Mr. Hawley a letter to which this is a reply. I retained no copy of it. As to the contents of that letter—the first thing was that the business between Mr. Hawley and the trustees should be conducted on business principles. I think it was distinctly stated that the trustees would extend the contract for one year on the same terms, to wit, $30 for each hydrant for one year,

and the object is to purchase the plant. I explained to him that the tax-payers did not amount to as many as he thought they did.

The plaintiff here read from said deposition the cross-examination, as follows.

101 Being cross-examined by Mr. Barrow he testified:

I have not a very clear and distinct idea of the contents of the letter I wrote to Mr. Hawley. I think it was substantially as I have stated. I am not sure that I said in that letter that the trustees would extend the contract for one year. I did not ask in that letter if the company would extend this contract for one year. I did not ask any such question. I do not think I ever asked the company to extend that contract. I think if I was to be positive I did not. I never asked the company or any officer of it, to furnish water to the village of Skaneateles for any purpose on any terms. I was never directed by the trustees to request the Skaneateles Water Works Company to furnish water to the village of Skaneateles for any purpose on any terms. I have no knowledge of the passage by the trustees of the village of Skaneateles of any resolution authorizing a contract with the Skaneateles Water Works Company to supply the village on any terms. I don't know of any request having been made of the Skaneateles Water Works Company by me or any person authorized by the trustees to supply the village with water on any terms, excepting the proposition that I made to extend the contract for one year for the purpose of ascertaining whether the plant of the water company could be purchased by the village. The idea was to purchase the plant. I was never in favor myself of entering into a contract with the company of any kind. I was in favor of a contract

102 for one year on the old terms. What I mean by the answer to the previous question is I supposed that was in a different line. I didn't mean that I was fully in favor of extending the old contract for one year. I was not in favor of any other contract with the old company besides that. I remained in favor of extending the contract for one year until I received Mr. Hawley's letter of Feb. 7, 1896; even afterwards as we did not want to have a fight with that company. I continued being in favor of making a contract of one year with the old company until I received that letter. (Witness' attention was called to a letter printed in the Skaneateles Democrat March 5, 1896.) The title of that article is "The only question now is municipal ownership of the water plant." I say in that article: "I am heartily in favor of continuing the present condition, of not making a contract with the water company." That was my feeling at that time, has been ever since. I can't say that I have been unfriendly to the Skaneateles Water Works Company since it commenced operations. I can't say that at any time I was friendly to them. I know nothing about them. I think there was a contract made by the trustees with the water works company. I don't know that I heard of it at the time. I remember signing a petition asking trustees to submit the question to a vote of the tax-payers. I didn't draw it, but I signed it first. I wasn't instrumental in getting it up; nor in getting signatures for it. I can't tell at whose

solicitation I signed it. I don't think I wrote any article in
103 the papers on the subject at that time, advocating the prayer of that petition. I have rather felt that we didn't require any system of water works in Skaneateles. I didn't think we needed it. I wouldn't have favored municipal ownership at that time. I have never taken water from the Skaneateles Water Works Company.

The defendant here read the redirect examination of the witness from said deposition as follows:

I didn't take water from the old company because I have water in the house already. I have a cistern that holds 60 hogshead of water, rain water from a slate roof, and a hot-air pumping engine in the cellar that cost me two hundred dollars, that pumps the water from the cistern to tank in garret that holds 30 barrels; from there it is distributed to second floor. All this I had before the water system was in.

My recollection of my letter to J. W. Hawley is I said that the trustees would extend the old contract for one year for the purpose of ascertaining whether the plant of the Skaneateles Water Works Company could be purchased, and if it could not be purchased as I think I stated, the people of Skaneateles were in favor of municipal ownership. I explained to him the vote of the tax-payers, showing that the tax-payers were far less in number than he expected, and stating that there were 80 female tax-payers who could not vote; that any business that the village might have with the water
104 works company would be done on business principles. I was guided more or less by that vote of the tax-payers. That election was called at my own suggestion. I did that immediately after receiving his letter in which he stated he could not renew the contract at $30 per hydrant. At that time I was in favor of renewing the old contract for five years, or for any number of years.

The plaintiff here read from said deposition the recross-examination of the witness as follows:

That vote that was taken on the question as to whether we should renew the contract at $50 per hydrant was taken somewhere in the village. I was there. I voted. That proposition was submitted by my suggestion. I didn't solicit and obtain votes against it. I don't recollect that I talked against it. I say I have always been in favor of renewing the old contract for five or more years at $30 per hydrant. I don't recollect of ever making a statement to any one connected with the old company that I was in favor of that renewal. I say I did not I have not had a great deal of correspondence on this subject; I have had some; written four or five letters. I have written communications to be published in the Skaneateles Democrat. I have never until now publicly expressed myself as being willing to renew the old contract with the Skaneateles Water Company for $30 per hydrant. I can't recollect the name of any person to whom I have expressed myself as being in favor of such renewal.

105 JAMES A. ROOT, being sworn for defendants and examined by Mr. Dillon, testified:

I saw Mr. Hawley once, president of the Skaneateles water works, when he came up here at our request to have a conversation with him. I had conversation with him. It was the latter part of May, I should think, or the fore part of June as near as I can recollect, of 1896. The water board requested him. We met him at the water board's office in the engine-house at Skaneateles. We had a conversation with him at that time for two hours. An attorney was with him, to whom he introduced us. I can't recollect his name; from Media, Pa., we had a conversation in regard to the sale of the plant. That was after the election. Before we had advertised or concluded to construct a water plant.

Q. State that conversation?

The plaintiff objected to the question as being incompetent, immaterial and irrelevant; the mere declarations of an officer of a corporation. The objection was overruled and the plaintiff excepted.

A. We had a correspondence. He came there with his attorney and we asked him what he would take for the present plant that was in there. He said that we had not in our condition enough to buy it. We had bonded for only $30,000 and that would not purchase the plant. We continued the conversation and wished that he would state some price. We asked him to state some price.

106 He stated that it was bonded in the first place for $40,000, that that would have to be paid for at par. That there was a second bonded indebtedness of $10,000 and that we would have to purchase that. Then there was the stock, he didn't mention how much, that it would be necessary to pay, he wouldn't say how much for that. He stated that he had paid one of our citizens $2,000 for his $10,000 of stock; he couldn't lose that. That citizen was Mr. Hall; he mentioned his name. He stated that he could not tell how much it could be purchased for and declined to state any price. When he left us, the president of our board, when he was about leaving the room, got up and urged the matter more strongly, and asked Mr. Hawley to state where he would be, his post-office address, so that we could continue this negotiation. That we wished, if possible, to purchase the old plant at some fair price and to avoid putting in one ourselves. Mr. Hawley replied that he did not know where he should be. It was left there. The president of our board, Mr. Lemual Hall, said to Mr. Hawley he would hear from us afterward in regard to the plant, that we should make an effort to negotiate for the purchase of the plant. After this time our board met; at the meeting of our board after that we consulted together and among ourselves decided to make an offer. We offered him $24,000 cash for the old plant. The board employed an engineer to make an estimate of the value of it. We made this

107 offer after we had procured an estimate from the engineer. I think it was this man here in Syracuse that made it, Mr. Higgins. I don't know whether we had more than one estimate. I

should call the paper now shown me the estimate that he made at that time.

Marked for identification Ex. 39.

Being cross-examined by Mr. Barrow, he testified:

We talked with Mr. Hawley upon the occasion I speak of about two hours; most of that time we were talking about the value of this plant. A great deal was said upon that occasion which I have not given, of course there would be. I have given only a small part of what was said in that two hours. I won't say that Mr. Hawley told us that he had no control. He stated that these bonds that were issued were widely distributed and owned by different parties; that he had no control over the bonds. He said that he considered they could be purchased or brought in; that he had a measure of control of them. He stated that they were widely distributed among different parties. I think he stated that all he owned was the stock, all he was interested in was some of the stock. And upon that he put no price at that time. When we asked him where he was going to be and I say he said he didn't know where he was going to be, I don't recollect that he told us he was going to Europe at that time. I wouldn't say he didn't say that. We subsequently did cause a letter to be written to him upon this
108 subject, and that letter made an offer to him. It stated a price, $24,000. A letter that was written to him stated the price, $24,000, as what the village would be willing to give, or the commissioners. I think the secretary of our board Mr. Shultz wrote that letter. I never saw it. We authorized our secretary to make that offer. I never saw the letter. The secretary is J. L. Shultz. I could not say of my own knowledge of its being sent, but it was reported to us as a board. He stated that there was no use in talking for we hadn't money enough to buy the plant. The money he referred to was the $30,000 that had been voted. I did not understand by that that the village didn't have money enough to buy the plant, wasn't rich enough. I wouldn't say that we understood by that there was a refusal to sell on any terms, but simply that $30,000 was not enough. It was not my idea always that the company should take what we thought was the value of this property. We should not have offered the $24,000 if we had only offered what we thought the plant was worth to us. For the sake of peace we offered more than we thought the plant was worth. We could not estimate the plant was worth to us over $15,000. We offered about $9,000 more than it was worth as we thought. I was always opposed, myself, to condemning this property or acquiring it in that way on account of the expense. At the meeting at Library hall you (Mr. Barrow) I recollect offered to pay all the expenses of the condemnation proceedings if we
109 would condemn excepting our attorneys' fees. The objection was made there at that time to the expense of condemnation proceedings, and that you stated in reply to it. I signed the petition that was presented to the trustees. I recollect a petition that was presented asking them substantially not to enter into a contract

with the company away back in 1889; we felt the price was too high. I was not active in getting up that petition. Before that I was active in raising objection to giving away the franchise. I was not opposed at that time to a water-works system; I felt as though the village needed it, but should own it ourselves. I did not carry that paper around and get signatures. I did not go and talk with people and ask them to sign it. When I talked with Judge Marvin or asked him to sign it was before that, not that particular paper. I will say that I was opposed to giving so much $30, for a hydrant. I was not opposed to giving anything. I have not always been unfriendly to this company from the start; I was opposed to giving away the franchise in the first place. That did not make me unfriendly to the company because they afterward did do it, in the strong sense of the word. I have said good words for this company. At various times, I thought they were doing a very good service to the village. I have not said that often because I have not thought so many times. I have not said so then sometimes when I have not thought so; I will give, as I say, the devil his due. It
110 was true as far as I said it. When I said I thought they were doing a good service for the village I meant it; not the full extent. Mr. Stephens of the Free Press uses the water there to run his press. I thought they were doing a very good thing in furnishing motive power for him. That is one of the things I said. There might have been something else I said in favor of this company. I thought it was a good thing to have the fountain there, but I didn't feel it was a good thing to pay so much for it. I was glad to see water in our fountain. I will say that I was fairly satisfied with the accomm-dations and so on until they raised on the price. I think Mr. Hawley at that time said also that what we should pay for the stock he would leave to us. He said he could not give away the stock. He said he had paid $2,000, but I think he said he would leave to us what should be paid for it.

Being re-examined by Mr. Tracy, he testified:

The reason that we put the price or value as low as $15,000 was because it was cement pipe, the pump-house was not where we wanted it; we should have to build a new pump-house; the standpipe was not what we needed; it didn't hold enough to supply the village twenty-four hours with water, if used freely. There was altogether too much small-sized pipe; it didn't cover all the streets; we should have to extend it. There were many buildings that were not
111 protected from fire which had to pay taxes; Mingo Lodge, for instance, had to extend their works themselves. The house of James A. Root is another. I had a right to protection, which I had not. I paid taxes and never had any benefit from those taxes in the way of fire protection. Previous to this time I had known of the condemnation proceedings in Syracuse as to the outlet and the water works there. It was on account of the expense that we refused to enter into condemnation proceedings. We were willing to enter into proceedings for the condemnation of

property with the agreement that the other side should pay the expenses and the commissioners' fees.

Q. Do you mean you were willing to enter into a lawsuit with the other side to pay the fees of the referee?

A. I don't know as I understand the question.

Q. Mr. Barrow testified that he offered to pay all the expenses of the condemnation proceedings, including the fees of the commissioners. Were the water commissioners willing to enter into a lawsuit, a litigation in condemnation proceedings where the other side was to pay the fees of the commissioners?

A. I prefer not to answer that. I would say if the court would permit——

By the REFEREE:

Q. You stated that Mr. Barrow made a proposition to pay the expenses of the commission with the exception of your counsel. Were you, as a member of the board, willing to enter into that ar-
112 rangement?

A. We knew——

Q. Were you willing as a member of the board?

A. Why, I was willing to pay a good, liberal sum for the old plant—(ordered stricken out).

Q. That is not what I asked you. You understand the question, don't you?

A. I don't know as I do, because I am not familiar enough with law to know the full expenses.

Q. Your opposition to condemnation proceedings was based upon what you thought might be extravagance in the fees of the commissioners and counsel, was it not?

A. If the court will permit, I will.

Q. No; never mind that. You were opposed to condemnation proceedings by reason of the expense attendant upon it?

A. I was.

Q. Mr. Barrow, you say, made a proposition to you, as an officer of the village, that he (representing the old company) would pay all the expenses incidental to the commission with the exception of the fees of your attorneys. Were you agreeable to accepting that proposition?

A. Why, at the time I didn't feel I was ready to accept of that.

By Mr. TRACY:

Q. On these condemnation proceedings you had learned that a very large amount had been allowed in the city of Syracuse for a system where they had cement pipe to some extent.

Objected to as immaterial and irrelevant.

The REFEREE: I think we have got about all the witness knows about it.

113 Mr. TRACY: I understand he was opposed because very large amounts had been allowed in condemnation proceedings also, that is all I care to prove about it.

The REFEREE: Do you object to it?
Mr. BARROW: No.

By Mr. TRACY:

Did you object to these condemnation proceedings on account of the large amount that had been allowed in the city of Syracuse where a system had been condemned on the same plan?
A. We did; we judged from what had been done here that it was not safe.

By Mr. DILLON:

Q. Not safe to put the village in that position?
A. Not safe to put the village in that position. It was not because we were not willing to pay a reasonable price for the old plant.

Re-examination.

By Mr. BARROW:

I wouldn't say that the reason why we were opposed to that was altogether that we were afraid that the amount awarded would be more than the value of the plant, more than our idea of the value of the plant. That was not the principal feature of it. A just award we were willing to pay. I would not say altogether that what we were afraid of was that we wouldn't get a just award. We were afraid if we let it go that way judging from our ex-
114 perience in the Syracuse matter that it would be too much.
I have lived in Skaneateles 42 years. The Kelly boys complained it wasn't laid up their street. It was not laid on East Austin street; the extension was not made on West Lake street. It was not laid on East Elizabeth street on the south end of West Lake street. I don't know what the name of that street is that runs by where our reservoir is. It was not put there. Will Chave is in our village; he has no protection. Mrs. Baker complained. That is a continuation of Cross street laid on one section of Cross street. The extention of Cross street where it is laid is longer than the principal street. In East Seneca street; it was not laid up by Mr. Fibbins. Up Cross street, up toward the Beaver place there are three houses on Onondaga street, there are three houses. I should say it was forty rods to Mr. Chave's on Onondaga street. On East Austin street 8 houses; oh, I was thinking of West Elizabeth. Upon East Austin street where this plant is put in there are 3 houses. The street was 8 or 10 rods long, three houses fronted on East Austin street. East Austin street was laid out when this plant was put in. I say it was not laid on East Elizabeth street. I wouldn't say there are no pipes on East Elizabeth street, the extension on East Elizabeth street. It is laid there, a part of East Elizabeth street. The part that I say 8 houses are on, where no pipes are laid is the part that lies between Syracuse and Leach avenue, Elizabeth
115 street. There are only three houses. The pipe does not run all through the street, but its runs in the east part of East Elizabeth street.

Redirect examination by Mr. DILLON:

There is no pipe at all on Austin, commencing at the Catholic church and going down that street to the bolt shop there is no pipe at all. There is a good number of houses on that street; both sides of the street. There is no pipe on West Elizabeth street west of the railroad. There is none on Griffith street. Austin street has been laid out a great many years.

Being cross-examined by Mr. Barrow, he testified:

I have heard or known of requests being made to this company to lay pipe on those streets, and its refusal to do so. I wanted it laid up by my house, up nearer to give me fire protection, as an extension on Genesee street. I know of no other than that; I let others take care of themselves. I have made a request that the company should lay pipe to my house for fire protection. That would be a thousand feet from the end of their line, and there is no house between me and that line. The cemetery wants it right opposite; they want water.

To the REFEREE:

When Mr. Hawley left Skaneateles I was convinced from
116 the conversation I had with him that we had not sufficient money out of the $30,000 in bonds to purchase this plant, from what he said to us; he told us plainly twice. When we wrote to him, or caused the offer of $24,000 to be made we believed he would consider that proposition notwithstanding what he had said when he left us. We were open for negotiation, if we had received a reply to that letter. One of our board wrote there to see if they had received that letter and they had. If we had received a reply to that letter we would have paid him more, than not to have got it.

I have no doubt we would have paid him the full $30,000. That was the only offer we ever made to him.

WARREN C. DE WITT, being recalled and examined by Mr. Tracy, testified:

This paper which you show me is the amended contract for the construction of the water works of the village that I mentioned the other day for the construction of the pump-house. That amends the other contract in some way.

Offered in evidence by defendant; received and marked Ex. 39.

In the original contract the bid of Marsden for the pump-house
117 was $5,000. The board decided they could get one with a cheaper pump-house and made this contract. It relates to the pump-house. Practically that was all there was except the well. The well was made instead of going into the lake. That change was made.

Q. What is the total cost of this work, under these contracts, of putting in the well and any other changes that have been made?

Objected to by the plaintiff upon the ground that it is immaterial; objection overruled; exception to the plaintiff.

A. Mr. Marsden's original contract for what work he took the way it was let to him originally, was $21,260. That was of course cutting out the pump-house and the intake pipe to the lake. The contract for the pump-house is $2,800. The cost of the well I could not swear to, but it is $868. I am quite sure and come cents. The suction pipe additional will cost, that is Mr. Marsden's estimate if it, what he agrees to put it in for, provided they shall see fit to give him that is $835; that makes a total cost of $25,763. There was about $240 to $250 saved on the reservoir; some less work done there, less than the contract, that would be deducted from this price. There has been land bought for the purpose of establishing these works. The Baber property, cost $500. And then there was property bought of Joseph Stott or Caroline Stott, for I think $450; $400 or $450. And then afterward the McCarthy property where the pump-house is, was bought for $450; that is the property.
118 And then there was an heir to the property that came in and she wouldn't release her claim, and they gave her a hundred dollars more for releasing her claim to the house, property and all. That is not included in the $25,000. I don't know exactly about that reservoir to a dollar, but I thing $250 within a few dollars anyway; deducting that and adding the land that was purchased it would be $26,963 total cost, including the land and everything.

Being cross-examined by Mr. Barrow, he testified:
That does not include anything for the expense of the commission, nor for counsel fees, nor to any engineering expenses. I have brought you the bids and have them here. All the bids were made on the same plans and specifications. Afterward some of it was cut out and we take that out of their total bid. The bids were let upon the same plans and specifications. The lowest bidder was M. B. Birdseye of Fayetteville, N. Y., on the amount of work that was let on that day. Taking it if the contract had been let that day for the whole amount. I don't think he was the lowest bidder in that way; this being stricken out, that is all. Every bid was put in regular, and they were stricken out in each bid, before they bid. So that when they bid they bid on the same thing. After they bid there was no change in the plans and specifications before the contract, none that day. Afterward the contract was let to Mr. Marsden. Mr. Marsden was the next lowest bidder; he came next to Mr. Birdseye.
119 The difference between them was about $100. The lowest bid, Mr. Marsden's bid was $21,260, I think, and according to this Mr. Birdseye's was $21,028.99. The difference is $231.01. The reason why the contract was not let to Birdseye was stated at the meeting that the Worthington people were to furnish the pump; and he said simply that if the lowest bidder, he didn't mention any name, but if the lowest bidder was to have the contract, that he should feel it his duty to have the commissioners guarantee payment of the pump; and they thought if that was the case they would prefer to let the contract to a responsible party. The Worth-

ington people, Alburger or some such name, made this statement; Birdseye didn't make it. Birdseye had nothing to say about that. That is the only thing I ever heard of. I never heard anything about a deal between any of these commissioners and Mr. Marsden. I could not say I have not heard it suggested on the street, but that is all.

To Mr. DILLON:

The notices for bids prescribed that each person who bid, should deposit a certified check with the water board for $500, payable to the order of the Skaneateles water board or the treasurer; Edward Eckett, treasurer, it seems to me, I don't think Birdseye complied with that, but I have forgotten positively. It was made payable to his order and was not endorsed; it was not of any use to the
120 water board, they could not recover on it. The plans and specifications contained a provision that the water commissioners should have a right to reject any and all bids.

Mr. Tracy offered in evidence deed of J. L. Clift to Village of Skaneateles, May 2, 1887, recorded May 10, 1887, in the clerk's office of Onondaga county, conveying the property that the village owns on the shores of the lake. A brief abstract of description.

GEORGE BARROW, being recalled by the defendants for further cross-examination by Mr. Tracy, testified:

I procured the consent of the superintendent of public works to take the water of the lake for the plaintiff. No compensation was paid to the State or anybody for this consent. The plaintiff purchased from Mr. Mason a lot of land on the lake. I presume that is all of the land described in the mortgage in evidence, the mortgage of the Skaneateles Water Works Company. It is the same lot of land described in the mortgage. The plaintiff had a deed of that land. It was purchased and the deed delivered between 1887 and 1890.

It is conceded that the plaintiff and the village have each acquired title to the land on the lake shore of which evidence
121 has been given; that they are owners under and by virtue of conveyance under a patent granted by the people of the State, of premises embracing those lands prior to the year 1830.

Mr. Tracy offered in evidence the petition for that is the application for the franchise granted to the plaintiff to establish water works.

Mr. Tracy also offered in evidence a map of the village of Skaneateles for the purpose of showing the extent of the village land on the lake shore.

Either party may produce such map on the argument of any appeal herein.

Mr. Tracy for the defendants offered in evidence the water commissioners' resolution directing the officers of the board to ask the officers of the village to call the water election, which was received. Ex. 41½.

He offered in evidence the certificate the result of the election dated May 9, which was received and marked Ex. 43.

Witness being shown a paper marked Ex. 43 testified that he served copies of that paper on Mr. Eckett and on Root, Shultz and Hall personally.

Defendants rest.

122 It is admitted by the defendants that the Skaneateles Water Works Company owns property situated on the lake shore that goes down to the lake.

It is admitted by the plaintiff that the lake is used as a feeder for the Erie canal.

HENRY T. BEACH, being called as a witness for the plaintiff, and examined by Mr. Barrow, testified.

I am a civil engineer; have been in active practice about 28 years; reside in Syracuse; have visited Skaneateles recently, made a map of the streets of the village of Skaneateles, made from what is known as the village map, a tracing of the streets. I have it with me. It shows the streets of the village, shows the location of the hydrants of the Skaneateles Water Works Company. The black dots that are indicated on the sides of the streets are hydrants. It shows the location of the pump-house of the water works company, the rectangular black spot on the east side of the lake. It shows the location of the standpipe; the heavy circle is the standpipe; near the east boundary of the village. It also shows the outlet of the lake. It shows the location of the well that has been constructed by the village of Skaneateles; it is the red circle near the outlet, a little west of it; that represents the location of the well. I have examined and am familiar with the topography of that sec-
123 tion of country. I have been there several times and examined it generally, especially in the vicinity of this well. It stands about 100 feet from the dock, taking that as the shore. But the water approaches within perhaps forty feet on the east, also on the edge of the dock. But in line with the well, on the line of the street, it is practically on the shore of the lake; that is, the north-and-south line. There are docks built out beyond it. This is a little further to the east; the lake there comes up to the same east-and-west line. I should describe it as being on the shore of the lake. I should judge that to the south and east of this there had been filling in there, apparently docks built and material filled in. The land lies practically level to the west of this well, toward the west; I should think for two or three hundred feet. And to the north there is a slight rise in the surface, for perhaps 100 feet, and then it falls away quite rapidly toward the outlet; that is, a rise until you get across the street and perhaps a little beyond, it is a slight rise; and then falls to the north, to the outlet. Upon the east it falls a little toward the outlet, although the ground is probably filled up there so that it is practically level. And beyond the outlet the street is practically level for some little distance; maybe a slight rise toward the east; not one that is very perceptible. We

took elevations of the water in the well and in the lake. The water was four feet and 8 inches below the level of the water in the lake.

124 Q. Assuming that a weir measurement of the water coming into this well has been made, and that 750,000 gallons have been pumped from it in 24 hours, and taking in view the lay of the land about that well; what is your opinion as to the source of the water which comes into it?

A. I should say without any doubt the water came from the lake.

The map produced by this witness was offered in evidence by the plaintiff; received and marked Ex. 40.

Being cross-examined by Mr. Dillon, he testified:

I made this tracing the latter part of last month, the 22d of January. I got the map that showed the location of the hydrants from Mr. Barrow. I located the hydrants only from a map. I didn't count them; they are shown on the map; I have not counted them; merely checked them off as I copied them to see that it was a perfect copy. Practically this map depends upon the correctness of the map that was shown to me as to the location of the hydrants.

GEORGE BARROW, being recalled and examined by Mr. Hawley testified:

The trustees of the village have never made application to the water company to my knowledge for any extension of the mains.

125 GEORGE BARROW, being recalled and examined by Mr. Tracy testified:

I have lived in the village of Skaneateles ever since I was three months old. For a number of years the State has maintained a dam there at the outlet where the water flows out of the lake. And the water from time to time has been discharged from the lake through this dam and through the outlet into the canal. And that has been so probably since 1843; since my earliest recollection. The dam that is there has been under the authority of the State, and the State has kept a gate-keeper there since 1875 or about then. And he has regulated the flow of the water from the lake and at times he has closed the gate so very little water flowed from the lake.

Being examined by Mr. Hawley, he testified:

During all that time as a general thing water has been allowed by the State gate-keeper to flow down the outlet during the season of the year when the canal was closed in the same quantity. And when the water has been shut off by the gate-keeper, the proprietors of the mills below, on the outlet, have filed claims against the State. And they have in many cases recovered awards. And claims of that sort are now pending before the State court of claims.

Mr. Tracy put in evidence the summons and complaint in a prior

action, which it was conceded was commenced Sept. 9, 1896;
126 that the original answer was served Oct. 20, 1896; an amended complaint was served Oct. 31, 1896; an order to the amended complaint was served Nov. 23, 1896; and that the summons and complaint in this action *was* served Oct. 29, 1896; and the answer in this action Nov 23, 1896.

Summons and complaint hereto annexed, marked Exhibit 45.

Mr. Tracy for the defendant-, offered in evidence the temporary injunction granted in said prior action begun Sept. 9, 1896; marked Ex. 43.

The evidence was here closed.

DEFENDANT'S COUNSEL: I move that the plaintiff be nonsuited upon the same grounds upon which our motion was made at the close of plaintiff's evidence.

Thereupon the referee, having reported in favor of the defendants, and the plaintiff having filed exceptions to his report, and having appealed from the judgment entered thereon, makes this case and exceptions, which with the exhibits thereto annexed contains all the evidence given upon the trial of said action and all the other proceedings upon said trial, to which is to be annexed the notice from said judgment, the judgment-roll and the plaintiff's exceptions to said report.

GEORGE BARAROW,
Plaintiff's Attorney, Skaneateles, N. Y.

127 *Exhibits.*

(Any exhibits not herein printed in full may if desired be produced to the court upon any argument herein by either party.)

Ex. 1, plaintiff's franchise, is as follows:

"SKANEATELES, *July* 5, 1897.

At a special meeting of the board of trustees, held in the fireman's room in the Shear block on the above date to consider the water question. Present, J. Allen, T. Kelley, M. C. De Witt, trustees.

In the absence of the president, W. G. Elery, Thomas Kelley was appointed president *pro tem.*

The following petition was presented to the trustees of the village of Skaneateles and to the supervisor of the town of Skaneateles, constituting the authorities of said village, according to chapter 213, of Laws of 1881.

The undersigned having organized for the purpose of forming a water works company to supply the village of Skaneateles and to the inhabitants thereof pure and wholesome water, hereby represent and set forth

First. That the persons who propose to form such company are John E. Waller, George H. Wicks, Lewis B. Fitch, Edwin E. Hall, John K. Knox, John McNamara, Benjamin F. Petheram and George Barrow.

Second. That the proposed capital stock of said company is forty thousand dollars.

Third. To be divided into four hundred shares of one hundred — each.

128 Fourth. That the source from which water is intended to be supplied is Skaneateles lake in the State of New York, and the authorities of said village are hereby requested to consider this application to supply the said village and the inhabitants thereof with pure and wholesome water. On motion of M. C. De Witt, sec. by J. Allen, the following resolutions were adopted:

Resolved, That the application of John E. Waller, George H. Wicks, Lewis B. Fitch, Edwin E. Hall, John K. Knox, John McNamara, Benjamin E. Petheram and George Barrow, bearing date this 5th day of July, having been duly considered it is hereby determined that such application be and the same is hereby granted, subject, nevertheless, to the conditions following:

First. The company to be formed under the authority hereby conferred shall have its works in general operation in said village within two years from the first day of December, 1887.

Second. The said company shall not charge or collect from said village at any time a greater sum than forty dollars per annum for each hydrant furnished for the use of said village, and at that rate shall furnish all hydrants required by said village at such places as shall be designated by its trustees.

Third. Such company shall be liable over to such village for all damages recovered against said village occasioned by any of the works or operation of said company.

129 Fourth. The streets in which said company shall lay their pipes shall be restored by said company to as good a condition as they shall be in immediately prior to the use thereof, immediately after such use.

Fifth. The rights hereby conferred shall not be sold or transferred by the said applicants to non-residents of the village of Skaneateles. And this instrument further certifies that said resolution so offered having been duly seconded was put to vote and was thereupon duly adopted by the following vote:

Ayes—Thomas Kelley, Joseph Allen, Martin C. Dewitt, Dennis Bockes.

The said resolution was thereupon declared adopted.

In witness of all of which we have hereunto set our hands this 5th day of July, 1887.

MARTIN C. DEWITT,
T. KELLEY,
JOSEPH ALLEN,
Trustees of the Village of Skaneateles.
DENNIS BOCKES,
Supervisor of the Town of Skaneateles.

Adjourned *sine die*.

S. E. BENEDICT, *Clerk*."

130 EXHIBIT 2.

Plaintiff's certificate of incorporation; is as follows:

"STATE OF NEW YORK, } ss:
County of Onondaga, }

We, the undersigned,
John K. Knox of Skaneateles, New York,
Lewis B. Fitch of Skaneateles, New York,
George W. Wickes of Skaneateles, New York,
Edwin E. Hall of Skaneateles, New York,
John McNamara of Skaneateles, New York,
Benjamin F. Petheram of Skaneateles, New York,
John E. Waller of Skaneateles, New York,
George Barrow of Skaneateles, New York,
do hereby certify, that an application, dated the 5 day of July, 1887, was made to the authorities of the village of Skaneateles for permission to organize a water works company to supply said village with pure and wholesome water, and at a meeting of said authorities, held on the 5th day of July, 1887, said application was duly considered and determined by granting the request therein contained.

That we propose to form a company pursuant to the provisions of — the legislature of the State of New York, entitled 'An act in relation to the creation and formation of water works companies in towns and villages of the State of New York,' passed June 12, 1873, and acts amendatory thereof, and supplemental thereto and do hereby set forth:

131 First. The name of the corporation is to be the Skaneateles Water Works Company.

Second. The names of the members of said corporation and their residences are as follows:
John K. Knox of Skaneateles,
Lewis B. Fitch of Skaneateles,
George H. Wicks of Skaneateles,
Edwin E. Hall of Skaneateles,
John McNamara of Skaneateles,
Benjamin F. Petheram of Skaneateles,
John E. Waller of Skaneateles,
George Barrow of Skaneateles.

Third. The capital stock of said corporation is to be forty thousand dollars.

Fourth. The location of the office of said corporation is to be in the village of Skaneateles, county of Onondaga, State of New York

In witness whereof, we have hereunto affixed our hands in the village of Skaneateles on the 12th day of July, A. D. 1887.

JOHN McNAMARA.
L. B. FITCH.
BENJAMIN F. PETHERAM.
JOHN K. KNOX.
EDWIN E. HALL.
JOHN E. WALLER.
GEO. H. WICKS.
GEORGE BARROW."

132 STATE OF NEW YORK, } ss:
County of Onondaga, }

John K. Knox, Lewis B. Fitch, George H. Wicks, Edwin E. Hall, John McNamara, Benjamin F. Petheram, John E. Waller and George Barrow, who being duly and severally sworn, say they are the individuals who subscribed the foregoing certificate, and that said certificate and statements therein contained are true to the best of their knowledge and belief.

L. B. FITCH.
EDWIN E. HALL.
JOHN E. WALLER.
GEO. H. WICKS.
JOHN McNAMARA.
BENJAMIN F. PETHERAM.
JOHN K. KNOX.
GEORGE BARROW.

Severally subscribed and sworn to before me this 12th day of July, 1887.

C. R. MILFORD,
Notary Public.

STATE OF NEW YORK, } ss:
Office of the Secretary of State, }

I have compared the preceding with the original certificate of incorporation of Skaneateles Water Works Company with acknowledgment thereto annexed, filed and recorded in this office on
133 the 1st day of August, 1887, and do hereby certify the same to be a correct transcript therefrom and of the whole of said original.

Witness my hand and the seal of office of the secretary
[L. S.] of state at the city of Albany, this 24th day of June, one thousand eight hundred and ninety.

FRANK RICE,
Secretary of State.

(Endorsed:) Tax for privilege of organization of this corporation, $50.00. Under chapter 143, Laws of 1886, paid to State treasurer before filing. State of New York. Office of secretary of state, ss. Filed and recorded Aug. 1, 1887. Diedrich Willers, deputy secretary of state.

EXHIBIT 3.

The contract of the plaintiff with the village, which is as follows:

The corporation of the trustees of the village of Skaneateles hereby contracts and agrees with the Skaneateles Water Works Company as follows:

The said trustees of the village of Skaneateles, rents and takes of the Skaneateles Water Works Company 40 hydrants, the location of each hydrant to be designated by the said trustees on the mains according to specifications hereinafter referred to for the term
134 of five years. The said company lets and rents to the said village of Skaneateles the aforesaid hydrants, each of which is to be and remain during the continuance of this contract in the places designated by said trustees, and be such as are known as the Ludlow, or other equally as good, non-freezing hydrants with double nozzle, and being the proper size, fitted with the proper thread, so that the first hose now in use in said village can be used on said hydrant- without any change being made in said hose, or coupling of said hose; the said hydrant- to be used for the practice of the fire department, for the extinguishment of fires, for flushing sewers and gutters, and for filling the street sprinkler used by said village for sprinkling the streets of said village for and during the aforesaid period; the said company agreeing to keep and maintain the said hydrants at the aforesaid location at all times supplied with water at a pressure at least to supply all the houses on the mains in said village, and in all parts of said houses, and at any time when so ordered by the chief of the fire department for the purpose of extinguishment of fires or one-half hour each month for the practice of the fire department, or on the occasion of any fire alarm the company agrees to pump water direct into the mains under a pressure of at least sufficient to throw a stream at least 40 feet in height through one thousand feet of hose at any hydrant on the said mains. The said company shall, and does hereby grant to the chief of the fire depart-
135 ment of said village, or an officer of said department duly authorized by said department, or the trustees of said village, the right and privilege at any time to inspect any or all of said hydrants for the purpose of knowing whether or not they are in good working order; if upon such inspection any of said hydrants are found to be out of working order, upon written notice to that effect specifying the hydrant or hydrants so out of working order, served upon said company, the said company agrees to at once put said hydrant or hydrants in good working order; and it is hereby stipulated that the above privilege granted for inspection of said hydrants does not in any manner absolve or release the said company from the obligation to at all times keep the said hydrants, each and every one of them, in good working order. In case of fire, said village by its trustees and chief engineer, shall have exclusive control of said hydrants without let or hinderance from said company; and the said trustees agree to use said hydrants with usual and ordinary

care, and to pay to said water company for any injury that happens to them through their carelessness and neglect when used by any officer, servant or member of the fire department of said village, or by any employee of said village. In flushing gutters and sewers the water shall be used through a hose and fire nozzle; no one hydrant to be used for that purpose exceeding 20 minutes in one week, or more than one used at a time, nor shall any flushing be
136 done during the existence of a fire in said village. The said company agrees to establish and maintain a connection between its pumping station and any engine-house, or other place in said village designated by the trustees, by electric fire alarm. The said company agrees to put the streets of said village where they have—disturbed by digging, or otherwise for the purpose of said company, within two weeks in as good order and condition as they were immediately before said disturbance, and should any of the streets thereafter be disturbed by said company, or its employees, agents or servants, the said company agrees when ordered by the board of trustees to put such street or streets in as good order and condition as they were at the time they were disturbed. For a compliance of the terms of this contract on the part of the said company the said trustees agree to pay for the rent of each of said hydrants the sum of $30 annually; one-half of the said sum to be paid at the end of each and every six months during the continuance of this contract, but provided, however, that the first payment shall not be due before July first, 1890. In case any of such hydrants are discovered by any officer of the village, duly authorized, or whose duty it shall be to inspect the said hydrants, to be out of repair and notice given to said company hereinbefore provided, no payment shall be made, or required for such hydrant, or hyd-ants while so out of repair after five days from such notification;
137 and the trustees may deduct from any sum due by them to said company the sum of $2 for each and every day thereafter that each hydrant remains out of repair, but not in all exceeding the sum of $75. In case of an alarm of fire it shall be discovered that any hydrant necessarily to be used for the extinguishment of such fire is out of working order, or does not afford a pressure as hereinbefore provided, the said trustees may deduct the sum of $50 from the rental of said hydrant, and in addition the rental of that particular hydrant shall cease while the same is out of working order, except that the said company shall not be liable for the negligence or default of the officer, servants or employees of said village. It is further agreed that in case the trustees shall deem other hydrants on other places where an extension of the mains of the said company would be necessary after the completion of the said works the said company agrees to put or place such hydrants and construct such main or mains as designated by said trustees, upon condition that one additional hydrant shall be put on every 500 feet of said extended mains; and that the trustees take and rent the same and pay therefor at the rate of $40 per year for each and every hydrant so placed after the same is in working order, and during the continuance of this contract; one-half the sum to be paid

semi-annually as the other payments are to be made; the
138 pressure of water for the new, or additional hydrants to be the same as heretofore; and all the agreements heretofore contained relate to the said additional hydrants in the same manner as to the hydrants originally put in. The said company in constructing its works will save said village harmless from all damages, accidents and injuries resulting from, or occasioned by said company, or by the bursting of pipes and mains of said company after the construction of its works. This contract shall take effect and be binding on the respective parties thereto from, and on the day when the works of said company shall have been completed, according to the provisions of this contract, and the said trustees have been notified of their completion; and said company have demonstrated by a practical test that said works are completed according to the terms of this contract, and not before. It is further provided, that, the water furnished by the said company shall at all times be in a pure and wholesome condition; and the said company agrees to construct its main as designated and put forth in the map this day filed with the clerk of said village; and in addition thereto to extend its mains on East Lake street to within 600 feet of William J. Bright's dwelling-house; and on Jordan street to Forest G. Week's dwelling; and on West Lake street to a point opposite William R. Wille's dwelling. If said company shall fail to perform any of the agreements herein contained on its part to be performed, and such failure
139 shall be caused by neglect or omission on the part of said water company, the trustees of said village may therefore at their discretion elect, and to terminate and end this contract, such election to be evinced by a notice in writing served on said water company, stating the fault complained of, within at least five days after such failure on the said company's part, and the discovery thereof by the said trustees.

In witness whereof, the said corporation of the village of Skaneateles has caused this contract to be signed by its president, and caused to be affixed thereto the corporate seal of the said village; and in witness of the same the said water works company has caused this contract to be signed by its president, and has caused its corporate seal to be affixed thereto.

Done at the village of Skaneateles, this — day of April, A. D., 1889."

The foregoing contract was duly executed by the village of Skaneateles under the hand of its president and its corporate seal; and by the Skaneateles Water Works Company under the hand of its president and corporate seal, and duly acknowledged.

Ex. 3½. Not printed. It was a corporate mortgage, dated August 22, 1890, given by the Skaneateles Water Works Company to trust company covering the real and personal property and franchises of
the Skaneateles Water Co., to secure the payment of $40,000
140 in bonds of the company and was recorded Sept. 9, 1890, in Onondaga county clerk's office in Book of Mortgages 259 at page 183, and was in the ordinary form of a corporate mortgage.

Ex. 4. Not printed. It was a corporate mortgage made Feb. 1, 1895, by the Skaneateles Water Works Company to the Delaware County Trust, Safe Deposit & Title Insurance Company of Chester, Pa., as trustees to secure $10,000 of bonds covering the real and personal property and franchise of the Skaneateles Water Co, and was recorded in the clerk's office of Onondaga county in Book 287 of Mortgages, page 455, Feb. 5, 1895, and was in the ordinary form of a corporation mortgage for such purpose.

Ex. 5. Election notice. Appears in the minutes of testimony. It is not here printed.

Exs. 7, 8, 9. Are commissioners' oaths, all in the same form, one of which appears in the forego- case.

Ex. 10. Contract with the village for construction of village water works. Not printed. Its contents being sufficiently described in the testimony in the foregoing case.

141 Exs. 11 to 20. Both inclusive consist of letters and are not printed here because the same appear in full in the foregoing case.

Ex. 21. Plaintiff's offer to the village May 9, 1896. Not printed here because the same appears in the foregoing case.

Ex. 33. Not printed. It was the plaintiff's bond given pursuant to the statute upon bringing action No. 1 as a tax-payer.

Exhibit 34.

Extension of plaintiff's franchise. Not printed in full because the same appears hereinbefore in the printed case, except that the same has added thereto the consent of the supervisor of the town of Skaneateles in the following language:

"I, Stephen Thornton, as supervisor of the town of Skaneateles, approve the foregoing resolution; and consent to the waiver of the provision in the franchise in said resolution referred to, requiring the company referred to, to have its works in general operation by Dec. 1, 1889.

Dated Dec. 14, 1889.

STEPHEN THORNTON, *Supervisor.*"

142 Ex. 36. Form of ballots—"For the water tax." "Against the water tax."

Ex. 37.

Remonstrance against contract with plaintiff as follows:

To the trustees of the village of Skaneateles:

We, the undersigned, citizens and tax-payers of the village of Skaneateles, hereby protest against the contract heretofore entered into by the trustees of this village with the Skaneateles Water Company without the knowledge or consent of the tax-payers, by which it was agreed to pay $1,200 or $1,500 annually for the use of water for fire purposes.

And believing such contract was unauthorized, and that the

public interests do not demand so great an outlay, that the question should have at least been submitted to the votes of the people, we hereby ask your honorable board to disaffirm and rescind such contract, and refuse to act under it unless legally compelled to do so.

EDMUND N. LESLIE,
J. C. STEPHENSON,
F. J. HARRIS,
A. P. INGERSON,
WILLIAM J. BRIGHT,
RICHARD SCOURSE,
J. H. DUCKETT,
JOSIAS GARLOCK,

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J. H. GREGORY,
GEO. H. WICKS,
JERRY SHALLISH,
J. B. MARSHALL,
GEO. P. LAWRENCE,
JOSEPH PARISH,
N. TURNER,
LYMAN HALL,
H. N. BERRY,
G. D. HALL,
C. ECKETT,
JAMES A. ROOT,
W. B. LAWTON,
E. R. GREGORY,
E. B. KNAPP,
JOEL BURRIDGE,
F. G. WEEKS,
LEVI WEEKS,
E. B. HOYT,
B. B. NORTHROP,
F. E. AUSTIN,
W. F. GREGORY,
R. M. STACEY,
C. J. SLATTERY,
E. C. PURCELL,
H. A. LIVINGSTON,
C. J. DE LAND,
B. PETHERAM,
JOHN HUMPHREYS,
S. D. CONOVER,
HENRY ELSON,
F. NYE HARWOOD,
GEO. POPLE,
SERENO FIELD,
LUCIAN MOSES,
GEORGE HUNT,
J. C. SIMMONS,
L. B. GOODWIN,
CHARLES READ,
JAMES W. JEWELL,
GEO. B. HALL,
SAMUEL JEWELL,
DANIEL PLATT,
H. G. DAVALL,
JOHN EVANS,
WM. J. WILLIAMS,
FRANK ADAMS,
H. M. SWEET,
HENRY THURLOW,
FRANK T. SIMMONS,
JOHN QUINN,
EDWARD DENT,
JOHN SIMMONS,
GEORGE COX,
WILLIAM SIMMONS,
THOMAS HOLLIER,
CHARLES AVERY,
JAMES CROSS,
FRED HARSE,
LEVI BARTLETT,

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JACOB HOAGLAND,
JOHN ENNIS,
JOSEPH ALLEN,
A. S. TALLEY,
M. C. DEWITT,
JOHN STEPHENSON,
J. H. BURNETT,
WM. MARSHALL,
A. BRADT,
F. H. LESTER,
F. E. TURNEM,
C. M. SMITH,
GEORGE MILFORD,
HENRY HARSE,
N. J. HOAG,
JOHN DAVEY,

ELIAS THORNE,	D. EARLL,
JAMES HYDON,	WM. R. TABER,
DAVID KEELER,	JAMES NOLAN,
S. H. POTTER,	R. B. THORNE,
ORSON YOUNG,	JAMES FITZGERALD,
CHAUNCEY B. THORNE,	THOS. S. DAY,
MATTHEW STEPHENSON,	FRANKLIN BARBER,
ALONZO GILLETT,	JOHN M. SANDFORD,
JOHN ROSSETER,	KEELING NEWTON,
DANIEL DOHERTY,	MICHAEL BRADLEY,
GEORGE STEARNS,	W. S. HOAG,
GEORGE W. HOPKINS,	O. C. GILLETTE,
WARREN WALLACE,	JOSEPH AVERY,
S. S. KNEELAND,	BENJ. FORSHEE,
WILLIAM CORNISH,	T. Y. AVERY.

Ex. 37. (2.) The consent of the superintendent of public works granted to the plaintiff. Not printed here because same appears in full in the foregoing case.

145 Ex. 38. Comptroller's certificate. Not printed here for the same appears in full in the foregoing case.

Ex. 39. Amended contract for construction of village water works. Not printed because sufficiently described in testimony.

Ex. 40. Map of the village of Skaneateles, produced by witness Henry T. Beach, showing streets of the village, location of hydrants, of the plaintiff's pump-house, standpipe, outlet of the lake, well constructed by the village. Not reproduced here because sufficiently described in the testimony.

EXHIBIT 41½.

APRIL 20, '97.

At a meeting of the water commissioners of the village of Skaneateles, held April 20, 1897.

Present: Commissioners Hall, Root, Shultz and Eckett.

On motion of J. L. Shultz, seconded by E. Eckett,

Resolved, That we recommend to the trustees of this village that they call a special election for permission to bond the village of Skaneateles, N. Y., for the sum of $30,000.00 and to sell such part thereof as may be necessary to procure and maintain a pure
146 and wholesome water supply for said village.

Carried.

Ex. 42. Deed of J. L. Clift to the village of Skaneateles, May 2, 1887, recorded May 10, 1887 of which the following is a brief description.

EXHIBIT 42.

All that tract or parcel of land situate in the village of Skaneateles, county of Onondaga, State of New York, being lot one of block 25, as designated on Griffin's map of Skaneateles village and

also a part of lot No. 36, in the original township of Marcellus and bounded and described as follows; on the north by Genesee street in said village; formerly the Seneca turnpike road; on the west by lands owned by E. A. Andrews; on the south by Skaneateles lake; on the east by the west line of lands conveyed to R. M. Stacey, by deed, dated Nov. 5, 1880.

Ex. 43 is certificate of the result- of the election as they appear in the testimony in the foregoing case, as follows:

EXHIBIT 43.

Whole number of votes cast was	146
For the water taxes	118
Against the water taxes	27
Defective ballots	1
Ballots returned not voted	1

147 STATE OF NEW YORK, } ss:
Onondaga County, }

John Connell, Edwin Whiting, Edward Dent, Warren B. De Witt, being duly and severally sworn say, each for himself the said Edward Dent that he was chairman, that said John Connell, Edwin Whiting and Warren B. De Witt, that they were inspectors of an election held in and for the village of Skaneateles on the 9th day of May, 1896, and that the foregoing statement of the result of said election is true to the best of his knowledge and belief.

WARREN B. DE WITT.
JOHN CONNELL.
EDWIN WHITING.
EDWARD DENT.

Sworn to before me, this 9th day of May, 1896.

M. F. DILLON,
Justice of the Peace.

148 EXHIBIT 45.

Supreme Court.

Trial Desired in Onondaga County.

THE SKANEATELES WATER WORKS COMPANY, Plaintiff,
against
THE VILLAGE OF SKANEATELES, E. NORMAN LESLIE, as President of said Village and Individually; John Connell, Edwin Whiting, and Edward Dent, as Trustees of said Village and Individually, and Lemuel D. Hall, Edward Eckett, James A. Root, and John L. Shultz, Individually and as Water Commissioners of the Village of Skaneateles, Defendants.

To the above-named defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney

within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated Sept. 8th, 1896.

GEORGE BARROW,
Plaintiff's Attorney.

Office address, Skaneateles, N. Y.
Post-office address, Skaneateles, New York.

149 Supreme Court, Onondaga County.

THE SKANEATELES WATER WORKS COMPANY, Plaintiff,
against
THE VILLAGE OF SKANEATELES, E. NORMAN LESLIE, as President of said Village and Individually; John Connell, Edwin Whiting, and Edward Dent, as Trustees of said Village and Individually, and Lemuel D. Hall, Edward Eckett, James A. Root, and John L. Shultz, Individually and as Water Commissioners of the Village of Skaneateles, Defendants.

The plaintiff above named for an amended complaint herein, states and alleges:

I. That at all the times and dates hereinafter mentioned it was and still is a domestic corporation, organized and existing under chapter 737 of the Laws of 1873 and the acts amending the same, and during such time it has been and now is engaged in furnishing to the inhabitants of the said village of Skaneateles pure and wholesome water.

II. The plaintiff further states and alleges, that it is and has been for several years last past, assessed as a tax-payer in said village, that the sum of its assessment or assessments in said village amounts to the sum of one thousand dollars; that it is liable to pay
150 taxes on such assessment or assessments in said village and that it has been assessed and has paid taxes in said village upon an assessment of one thousand dollars, within one year previous to the commencement of this action.

III. That the defendant, The Village of Skaneateles, aforesaid, is a municipal corporation of this State; that the defendant, E. Norman Leslie, is the president of said village; and that John Connell, Edwin Whiting and Edward Dent are the trustees of said village.

IV. That heretofore the said village of Skaneateles, and the authorities duly empowered, granted a franchise to construct and maintain within said village, a system of water works for furnishing to the said village and its inhabitants pure and wholesome water; that the said corporation plaintiff now is the owner of the said franchise and is possessed of all the rights, legal and equitable appertaining thereto; that the said corporation in or about the year 1889, constructed or caused to be constructed under and in pursuance of said franchise a complete system of water works for supplying the said village and its inhabitants with pure and wholesome

water; that it has fully and in all respects complied with the terms and conditions upon which the said franchise was granted, that at the time of the granting of said franchise and the construction of said system of water works, the said village of Skaneateles was not supplied with water by any company or corporation, nor did it possess any
151 system of its own, but was in great and urgent need thereof, but that it and its inhabitants were averse to the establishment or erection of any system of its own, for furnishing to itself or its inhabitants a system of water works; that the system of water works so constructed and completed as aforesaid by this plaintiff, was, and at all times since has been and now is, a complete and adequate system:—that its pipes are laid in all the streets of said village; that no complaint exists or ever has existed, and no complaint has ever been made, that the water furnished by said plaintiff has not been pure and wholesome; or that the sufficiency thereof has not been abundant; or that the head or pressure thereof has not been adequate or sufficient for fire protection, and for all other purposes; that the source from which said corporation plaintiff procures its water is Skaneateles lake, which is the only source from which water can be obtained for supplying the said village with pure and wholesome water; that upon the completion of said system of water works, as aforesaid, the said plaintiff contracted with the said village for the term of five years to supply the water for forty hydrants and for other purposes for the sum of thirty dollars ($30) each; that the said contract expired on the first day of February last past, but was not renewed; that after the expiration of said contract the said company offered to furnish water to said village for its fire protection at the rate of $40 per hydrant
152 for the term of five years and after the expiration of said five years for five, ten, fifteen, twenty or thirty years at the rate of $30 per hydrant; that up to that time, the expiration of said contract, the income derived from the said village and from the inhabitants for rentals had been wholly inadequate to pay the fixed charges and running expenses of the corporation, to cover which the said corporation asked an increase of hydrant rentals from said village at $10 each for the next five years; that the said sum asked for hydrant rentals was exceedingly low, and taking into account the number of hydrants and the elevation to which water was required to be pumped, was less than the sum charged, as plaintiff is informed and believes, by any corporation furnishing water to any village or municipal corporation in this State; that the rates charged by said corporation to private consumers were and now are equally low; that the said village by its authorities ignored or refused to accept the offer made by the plaintiff aforesaid; that the said company also offered formally, before any of the proceedings of the defendants hereinafter were taken, to consent that appraisers might be appointed in condemnation proceedings under the statute, to determine the value of its plant, and that it would co-operate with said village for the acquisition of its plant upon such proceedings, that such offer was ignored or refused.

V. The plaintiff further alleges that the annual elections
153 in said village occur on the third Tuesday in March; that at the last election in said village held on the 17th day of March, 1896, said defendant E. Norman Leslie was elected president and said defendant Edward Dent was elected trustee, said defendants Edwin Whiting and John Connell as trustees of said village holding over; that the next annual election to be held in said village will be held on the third Tuesday in March, 1897; that after the election and qualification of said E. Norman Leslie and said Edward Dent, the said E. Norman Leslie as such president called a special meeting of the board of trustees of said village to be held on the 21st day of March, 1896, for the purpose of appointing water commissioners for said village; that prior thereto no water commissioners have ever been appointed for said village and the authorities of said village and never organized as a board of water commissioners; that at the said meeting aforesaid the trustees of the said village instead of causing the president of said village to appoint commissioners, three or more in number, as they were authorized to do, adopted a resolution of which the following is a copy.

"Resolved, That the president be and is hereby authorized to appoint the following-named persons as water commissioners of the village of Skaneateles, N. Y., Lemuel D. Hall, James A. Root, Edward Eckett, and John L. Shultz;" that thereupon a discussion took place in the said meeting, the president claiming that he had the right to appoint commissioners not named by the trus-
154 tees, and the trustees or some of them, claiming that the trustees had the right to name the commissioners who should be appointed; that the president yielded and thereupon named Lemuel D. Hall, James A. Root, Edward Eckett and John L. Shultz, to be water commissioners for said village and they were thereupon confirmed by the said trustees as such; and plaintiff further alleges upon information and belief, that the said persons so appointed or named, thereafter took the usual oath; that thereafter the said persons so appointed as aforesaid, met and organized, or assumed to organize as a board of water commissioners, for said village but that they did not at that time (nor have they at any time since) determined their terms of service as required by law; that notwithstanding the same, they have assumed to act and now assume to act as water commissioners for said village.

That on the 23rd day of April, 1896, said persons so acting or assuming to act as a board of water commissioners for said village, presented to the trustees of the village of Skaneateles a communication in writing of which the following is a copy:

"To the trustees of the village of Skaneateles.

GENTLEMEN: We, the board of water commissioners of Skaneateles village, having organized by the election of a president, secretary and treasurer, would respectfully request your honorable

body to issue a call for a special election to determine the
155 question of bonding the said village to furnish a supply of pure and wholesome water for said village, pursuant to chapter 181 of the Laws of 1875.

Yours respectfully, LEMUEL D. HALL, *President.*
JOHN L. SHULTZ, *Secretary.*"

That thereupon and at the same meeting of the trustees the following resolution was adopted, namely,

"Resolved, That the clerk, in conformity to the request of the board of water commissioners, be directed to issue a call for a special election to be held in the trustees' room in the engine-house in the village of Skaneateles, N. Y., on the 9th day of May, 1896, from 1 o'clock until sundown of that day, to determine the question whether the village of Skaneateles shall bond itself for the purpose of supplying said village with a supply of pure and wholesome water to the amount of $30,000, as provided by chapter 181 of the Laws of 1875;" that at the same meeting it was further resolved as follows, namely, "Resolved, That the clerk be authorized to have the following notice published in the Skaneateles Free Press for two weeks:

Special-election Notice.

We, the undersigned, board of trustees of the village of
156 Skaneateles, county of Onondaga, New York, hereby give notice that a special election will be held in the trustees' room, in the engine-house in the village of Skaneateles, N. Y., on Saturday, May 9th, 1896, at which the question will be submitted whether the taxes, under the act, chapter 181, Laws of 1875, authorized for the purpose of furnishing pure and wholesome water to the inhabitants of said village, shall be levied and collected from the village as in that act provided and whether the village of Skaneateles shall bond itself for the above-mentioned purpose to the amount of $30,000. The vote shall be by ballot. Those in favor of taxes shall have printed thereon 'For the water taxes' and on the ballots of those opposed 'Against the water taxes.'

The polls of the election will open at 1 o'clock in the afternoon and continue open until sunset of the 9th of May, 1896.

E. NORMAN LESLIE, *President.*
JOHN CONNELL,
EDWIN WHITING,
EDWARD DENT, *Trustees.*

Skaneateles, April 23, 1896."

That thereafter the said notice in the said form was published in the said Skaneateles Free Press for two weeks, excepting that the same as published was headed "Special election" instead of "Special-election notice;" that thereafter and on the 9th day of May, 1896,
no other notice having been published and no other notice
157 having been applied for by the said persons acting as a board of water commissioners, the trustees of said village met at the

place and time designated, and proceeded to receive votes offered; that votes were received having printed thereon "For the water taxes" and "Against the water taxes"; that before the voting and before any votes were received, the trustees aforesaid announced that they would receive all votes offered by those whose names appeared upon the last assessment-roll of the village and such votes only; that they would not receive the votes of those who were only voters or electors in said village; that votes were offered by legal voters or electors in said village whose names were not upon the last assessment-roll of said village, but that the same were rejected; that votes were received from non-residents of said village and non-voters or electors therein, whose names appeared on the last assessment-roll of said village; that a majority of the votes so cast, received and counted were cast for the ticket having printed thereon the words "For the water taxes," but that the number of votes polled was greatly less than the number of residents of said village whose names appeared on the last assessment-roll of said village; that thereafter it was announced by the said trustees acting as inspectors, that the ticket having endorsed or printed thereon the words "For the water taxes," had received a majority of the votes cast.

VI. And the plaintiff further says, upon information and
158 belief, that the said defendants, Lemuel D. Hall, Edward Eckett, John L. Shultz and James A. Root, as water commissioners of said village, intend, in pursuance of the said vote, to proceed with the duties imposed by law upon water commissioners and water boards in villages; that it is their purpose and intention to forthwith issue bonds upon the credit of said village, and procure the same to be sold and to use the proceeds thereof in the construction of a plant to be owned and operated by the said village in opposition to the plant now existing; that the water designed to be used is to be derived from the same source, to wit: Skaneateles lake; and their plan of construction proposed is to be similar to the plan of construction of the present plant, to give the same pressure of water for fire protection; that they have employed an attorney to act for them; that they have employed surveyors and engineers on the credit or at the expense of said village to make plans and specifications for a system of water works for said village; that they have incurred traveling and other expenses of themselves upon the like credit or expense; that they have caused bonds to be printed and have offered the same for sale, and have received bids therefor; that they have also advertised for bids for building a system of water works, and have received bids, and have, as plaintiff is informed and believes, accepted a bid for the construction of a proposed system of water works to be constructed and operated in opposition to the plant of this plaintiff.

159 VII. The plaintiff further alleges, that the said defendants, Lemuel D. Hall, Edward Eckett, James A. Root and John L. Shultz, acting or assuming to act as such water commissioners, have not, nor has either of them, executed or filed with the clerk of the county of Onondaga their joint and several bonds, or their separate bonds or any bond or bonds, with sureties, executed in the manner

and in pursuance of the requirements of the statute requiring such bond or bonds to be so filed before any bonds, certificates or other obligations of indebtedness shall be issued, or any official act be done by any board of commissioners authorized by the statute under which said pretended commissioners assume and pretend to be acting.

VIII. And this plaintiff, upon its information and belief, alleges, that the alleged pretended appointment of the said Lemuel D. Hall, Edward Eckett, James A. Root and John L. Shultz, as water commissioners for the village of Skaneateles aforesaid, was illegal and void; and not made by the president of said village, in pursuance of the statute in that case made and provided, and that their appointment was invalid and that by reason thereof they acquired no power or authority to act as such commissioners, and that all the acts performed by them by virtue of such appointment are illegal and void; that the said pretended commissioners have failed to comply with the statute in that case made and provided, in
160 that they have never met and determined their respective terms of service, as required by law, and that they have no power or authority to act as such commissioners until they have so met and determined their respective terms of service; and that all their acts done are illegal and void; that the said pretended commissioners are not authorized to act, in any event, as such water commissioners, excepting to determine their term of service, until the next annual election to be held in said village, and that all their acts done are illegal and without authority *by* law; that said pretended commissioners have never been legally authorized to act by any vote of the persons entitled to vote, and of whom the statute requires a majority, before commissioners are authorized to proceed under authority of law; that the notice given by the trustees of said village, defendants herein, of a "special election" was not such a notice as they were required or authorized to give, to confer upon commissioners the powers mentioned in the statute; that the same was not a notice of a meeting contemplated by the statute, it was not a notice to the persons entitled to vote upon the question submitted; it was not a notice of a meeting to vote upon any question which the trustees were authorized to submit; that it was on the contrary notice of a special election to vote upon aproposition which the trustees had no authority to submit to a vote of the people, that the same was illegal and contrary to the statute, and the vote
161 thereon did not confer upon water commissioners any right, authority or power to proceed to act as water commissioners.

That the trustees of the said village, defendants herein, erred in receiving the votes of tax-payers who were not residents or voters in said village; that they erred in rejecting and refusing to receive the votes of those who were qualified to vote in said village, and that the vote received, counted and proclaimed, conferred no power under the statute upon the said water commissioners, and that all their said acts done have been done in violation of law and contrary to the statute, and their acts aforesaid threatened to be done, if done will be illegal and void; that by reason of the failure of said pre-

tended commissioners to file the bond or bonds required by law, all their official acts as commissioners are illegal and void.

IX. The plaintiff further alleges, that the village of Skaneateles, is a village having a population of about 2,000 persons; that such population is too small and insufficient to support two water systems; that if such new system shall be constructed to be operated in opposition to the present plant, neither of said systems will be profitable, and that the tax-payers of said village, including the plaintiff, will have to be taxed to support and maintain such new proposed system; that in the operation of such new plant, in opposition to the present plant, much confusion will necessarily arise in relation to the laying of pipes for such new system and in the crossing of service pipes over the mains of the present plant out of which
162 litigation is likely to arise lasting for a series of years; that if the present plant was acquired by said village under condemnation proceedings as it is authorized and empowered to acquire by law, it would acquire a plant for no more than its value, and be enabled to operate it without competition and to its great advantage and profit; that the construction of such new plant by said pretended water commissioners, will result in a great waste of and injury to the estate, funds and other property of said village and be of lasting and irreparable injury to the village of Skaneateles and its inhabitants.

Second.

For a second and further cause of action the plaintiff states and alleges:

I. That heretofore and in or about the year 1887, the village of Skaneateles being a municipal corporation of this State, having a population of about two thousand inhabitants, was possessed of no system of water works for supplying its inhabitants with pure and wholesome water; nor was it provided with any water for fire protection or sewerage or sanitary purposes; that the inhabitants of said village were at that time opposed to incurring the expense of constructing any system of water works; that the authorities of said village, together with the supervisor of the town of Skaneateles, in which town said village is situated, upon application duly made, then duly granted a right, privilege or franchise, to construct a system of water works in said village, for supplying the said village and its
163 inhabitants with pure and wholesome water, and to occupy the streets of said village perpetually for such purpose; that upon the grant of such franchise conditions were imposed; that the plaintiff herein became the owner of said franchise, grant or privilege, and proceeded to, and did, construct a valuable and desirable system of water works for furnishing to said village and its inhabitants pure and wholesome water, and took possession of the streets of said village, and has ever since occupied, and now occupies the same with its pipes, mains, hydrants, valves, etc., as required in order to perform the conditions imposed by said grant; that the said corporation plaintiff expended large sums of money in the construction of its said plant, and obtained money therefor by mort-

gaging its said franchise and property in the village of Skaneateles, as security for its bonds duly issued and now outstanding, amounting to $50,000, none of which have been paid; that the said bonds are now held and owned by a large number of persons; that the construction of such works by said village would impair and destroy the value thereof, and such construction, as plaintiff is informed and believes, would render such defendants liable to a multiplicity of actions to be brought by the several holders of said bonds, to restrain such construction, and to prevent such destruction and impairment of the value of such bonds.

II. That the contract of the plaintiff with the defendant, The Village of Skaneateles, for supplying it with pure and wholesome water as aforesaid, expired on or about the 1st day of Feb-
164 ruary last, and the said defendant, The Village of Skaneateles, refused to make any contract whatever with said company, but through its authorities, inaugurated a scheme to construct a system of its own for supplying itself and its inhabitants with pure and wholesome water from Skaneateles lake; that in pursuance thereof the defendants, Lemuel D. Hall, Edward Eckett, James A. Root and John L. Shultz, claimed to have been appointed water commissioners by virtue of the proceedings hereinbefore set forth in the foregoing first cause of action, to which reference is hereby made for said proceedings, and the proceedings mentioned in said first cause of action, as therein set forth, were had and taken, all to the end and purpose of constructing a system of water works in said village to be operated in opposition to and in competition with the plant of this plaintiff, and on behalf of said village, and said pretended commissioners are now proceeding as such to construct such plant; that they have issued or are about to issue the bonds of said village for such purpose, and have contracted or are about to contract for the construction of such system of water works.

III. Plaintiff further alleges that the plant or system to be constructed by said village through said pretended commissioners as aforesaid, will in view of the plant of the plaintiff existing in the same street and location, possess but little value, and will constitute a waste of, and injury to, the estate, funds and other property of said village.

165 Wherefore, the plaintiff prays for a judgment in this action, determining the acts of the president and trustees in appointing water commissioners for said village to be void, and determining and declaring all the acts performed by said trustees and by said persons so appointed commissioners aforesaid, to have been illegal and without authority in law and void, and requiring the said persons so appointed as aforesaid, to restore and make good to said village, any property, funds or estate of the said village, and to restrain the trustees of said village permanently and perpetually from auditing or paying any indebtedness incurred by said persons assuming to act as such commissioners heretofore contracted or agreed to be paid by them; and also for judgment restraining the defendants, Lemuel D. Hall, James A. Root, Edward Eckett and John L. Shultz, and each and every of them, and their attorneys,

agents, and servants, from doing or suffering to be done, any act whatsoever authorized to be done by water commissioners legally appointed and legally acting and authorized to act, under the statutes of this State, or appointed by water commissioners to be done, whether jointly, severally or distributively, for the promotion, furtherance or consummation of the scheme or plans contemplated by any act or statute or of any scheme or plan of said persons claiming to act or acting as water commissioners for said village; and that the defendants and each and every of them, according to the
166 function claimed by them, respectively whether jointly, severally or distributively, be restrained and enjoined perpetually from exercising such powers and functions in the premises; the plaintiff also prays for an injunction during the pendency of this action, restraining the defendants in the manner above set forth until final judgment in the action shall be rendered, and for the costs and disbursements of this action.

GEORGE BARROW,
Plaintiff's Attorney, Skaneateles, N. Y.

STATE OF NEW YORK, }
Onondaga County, } ss.:

George Barrow, being duly sworn, deposes and says: That he is a director of the corporation plaintiff in the above-entitled action; that he is also an officer of the said plaintiff other than that of director, to wit: the manager thereof, and that he is the attorney for the plaintiff herein; that none of the other officers of said company, excepting directors, reside in the State of New York, and that the foregoing complaint is true to his own knowledge, except as to those matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

That the reason why this verification is not made by the plaintiff is that said plaintiff is a domestic corporation and cannot make the same; that the grounds of deponent's belief as to all matters in said complaint contained not stated upon his knowledge, are an
167 inspection of the records of the village of Skaneateles, his familiarity with the plaintiff from its organization, and a long residence in said village, and a general knowledge of the transactions alleged in said complaint.

GEORGE BARROW.

Sworn to before me, this 31st day of October, 1896.

G. O. DURSTON,
Notary Public.

Supreme Court, Onondaga County.

THE SKANEATELES WATER WORKS COMPANY, Plaintiff,
against
THE VILLAGE OF SKANEATELES, E. NORMAN LESLIE, as President of said Village and Individually; John Connell, Edwin Whiting, and Edward Dent, as Trustees of said Village and Individually, and Lemuel D. Hall, Edward Eckett, James A. Root, and John L. Shultz, Individually and as Water Commissioners of the Village of Skaneateles, Defendants.

SEPTEMBER 9TH, 1896.

On the sworn complaint in the above-entitled action and
168 on the affidavit of George Barrow therein, a motion being made by George Barrow of counsel for the plaintiff for a preliminary injunction against the defendants or some of them and sufficient reason appearing why the same should be granted:

It is hereby ordered: That, until the further order of the court, the above-named defendants, Lemuel D. Hall, Edward Eckett, James A. Root and John L. Shultz, both as individuals and as water commissioners of the village of Skaneateles, separately and collectively, and their and each of their agents, servants and employees, be commanded, and they are hereby commanded to refrain from doing or suffering to be done any act whatsoever authorized to be done by water commissioners legally appointed and legally acting and authorized to act under the statutes of this State; or appointed by water commissioners to be done, whether jointly, severally or distributively for the promotion, furtherance or consummation of any scheme or plan of said persons claiming to act or acting as water commissioners of the village of Skaneateles, upon the ground that such acts, if performed, would be illegal.

And on the complaint and affidavit aforesaid, let the defendants herein, or their attorneys, show cause before this court, on the 19th day of September, 1896, at 10 o'clock in the forenoon of that day at the court-house in the city of Syracuse, why the foregoing order, or some order to be made of like import and effect, should not be continued in full force and until the final judgment and decree
169 in this suit; and until the foregoing order is modified let the same be in full force and effect.

P. B. McLENNAN,
Justice of the Supreme Court.

GEORGE BARROW,
Plaintiff's Attorney.
Office & post-office address, Skaneateles, N. Y.

It is hereby stipulated that the foregoing case and exceptions, containing all the evidence given upon the trial of the above action and all the proceedings upon said trial may be settled and ordered filed in Onondaga county clerk's office.

GEORGE BARROW,
Plaintiff's Attorney, Skaneateles, N. Y.
M. F. DILLON,
Defendant's Attorney, Skaneateles, N. Y.

The foregoing case and exceptions, containing all the evidence given upon the trial of the above-entitled action and all the other proceedings upon said trial, are hereby settled and allowed and ordered to be filed in Onondaga county clerk's office.

JOHN W. HOGAN, *Referee.*

170 Supreme Court.

Trial desired in Onondaga county.

THE SKANEATELES WATER WORKS COMPANY, Plaintiff,
against
THE VILLAGE OF SKANEATELES, E. NORMAN LESLIE, as President of the said Village; John Connell, Edwin Whiting, and Edward Dent, as Trustees of said Village, and Lemuel D. Hall, Edward Eckett, James A. Root, and John L. Shultz, as Water Commissioners of the Village of Skaneateles, Defendants.

To the above-named defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated October 29, 1896.

GEORGE BARROW,
Plaintiff's Attorney.

Office and post-office address: Skaneateles, N. Y.

171 Supreme Court, Onondaga County.

THE SKANEATELES WATER WORKS COMPANY, Plaintiff,
against
THE VILLAGE OF SKANEATELES, E. NORMAN LESLIE, as President of said Village; John Connell, Edwin Whiting, and Edward Dent, as Trustees of said Village, and Lemuel D. Hall, Edward Eckett, James A. Root, and John L. Shultz, as Water Commissioners of the Village of Skaneateles, Defendants.

The plaintiff above named, complains of the defendants, and for cause of action, alleges:

That at all the times hereinafter mentioned, said plaintiff was and still is a domestic corporation, organized and existing under chapter 737 of the Laws of 1873, and the several acts amending the same, and ever since the 1st day of January, 1890, it has been and now is engaged in furnishing to the inhabitants of said village of Skaneateles, pure and wholesome water.

That the defendant, The Village of Skaneateles, is a municipal corporation, organized and existing under chapter 291 of the Laws of 1870 of this State; that the defendant, E. Norman Leslie, is the

president of said village, and that the defendants, John Connell, Edwin Whiting and Edward Dent, are the trustees of said village.

172 That the plaintiff was incorporated and organized as aforesaid, for the sole purpose of supplying the village of Skaneateles and its inhabitants with pure and wholesome water.

That on the 5th day of July, 1887, a petition was presented to the trustees of the village of Skaneateles, and to the supervisor of the town of Skaneateles, pursuant to the provisions of the said statutes providing for the incorporation of water companies.

That thereupon the said authorities adopted a resolution as follows: "That the application of John E. Weller, George H. Wicks, Lewis B. Fitch, Edwin E. Hall, John K. Knox, John McNamara, Benjamin F. Petheram and George Barrow, bearing date this 5th day of July, having been duly considered, it is hereby determined that such application be, and the same is hereby granted, subject nevertheless, to the conditions following:

First. The company to be formed under the authority hereby conferred, shall have its works in general operation in said village, within two years from the 1st day of December, 1877.

Second. The said company shall not charge or collect from said village at any time a greater sum than forty dollars per annum for each hydrant furnished for the use of said village, and at that rate shall furnish all hydrants required by said village at such places as shall be designated by its trustees.

173 Third. This company shall be liable over to said village for all damages recovered against said village, occasioned by any of the works or operations of such company.

Fourth. The streets in which said company shall lay its pipes shall be restored by said company to as good a condition as they shall be in immediately before such use.

Fifth. The rights hereby conferred shall not be sold or transferred by said applicants to non-residents of the village of Skaneateles."

The said authorities made and signed a certificate to that effect, and the same, or duplicates thereof, were thereafter filed as required by the said statute. That the said franchise was duly accepted by the persons named in said application and in said franchise, and said persons thereafter duly met and organized as a water works company under the name of "The Skaneateles Water Works Company," and duly filed in the office of the secretary of state a certificate of such organization, in the form and in the manner required by law: and the said corporation so organized is the plaintiff herein. Thereafter the time limit of such franchise, was by the said village extended to December, 1890, and the said plaintiff thereunder and upon the faith thereof constructed a system of water works adequate for and for the purpose of supplying to the said village and its inhabitants, pure and wholesome water, and it has fully and in all respects performed all the conditions of its said franchise.

174 That the works of said company having been fully completed it entered into a contract with the said village, for the

supplying to said village of water by means of its water-works system, for fire protection, sanitary and municipal purposes, for a term of five years from February 1, 1891.

And the plaintiff further alleges, that it fully performed all of the conditions of its said contract, and said contract last hereinbefore mentioned, expired by its limitation on the 1st day of February, 1896, and by said village was not renewed; that the plaintiff has ever since been ready and willing to fu-nish the use of its hydrants to said village, at the rate mentioned in its said franchise; it has never been asked to so furnish its hydrants or any water to said village for any purpose since the expiration of its said contract; it has never refused to furnish water to said village for fire protection or for any other purpose; its system of water works is a good, adequate and sufficient system for all the wants and requirements of said village. The water it has furnished, and which it has been prepared to furnish, ever since the construction of its works, and is now prepared to furnish, has been and is pure and wholesome water taken from Skaneateles lake; that no complaint has ever been made to the plaintiff in regard to the character of the water furnished, by it, or in regard to its sufficiency for fire protection or municipal or sanitary purposes; that it has regularly furnished water to the inhabitants of said village at un-
175 usually low rates, and its system adequately supplies the wants of said village, which is a village of about two thousand inhabitants, with facilities for the use and consumption of pure and wholesome water; that the income derived by the plaintiff since the construction of its works, has been wholly insufficient to earn for its stockholders any dividend; that it has been insufficient to pay its fixed charges and operating expenses, and that its stockholders have been obliged to advance money to pay such fixed charges and operating expenses, because the same were greatly in excess of its income.

That when the said franchise was granted by the said village, and the plaintiff was organized, the said village was not supplied with a system of water works, and the inhabitants thereof were dependent upon wells and cisterns and said village was wholly without a system of water works for fire protection, and all other needed municipal purposes; that said village was then in great and urgent need of a sufficient supply of pure and wholesome water for such purposes; that it was then authorized and empowered by law to construct and operate a system of water works of its own for supplying to itself and to its inhabitants pure and wholesome water, and if was likewise authorized at its election to contract with a private company to furnish to it and to its inhabitants pure and wholesome water; that being so authorized by law, it duly and regularly
176 made its election to grant a franchise to a private company, to wit: to the plaintiff, and did in pursuance of such election grant the franchise aforesaid, under which the said company was organized and under and upon the faith of which said company constructed as aforesaid its system for supplying to said village and its inhabitants the water required by it and them; that the said

system so constructed by said company, was constructed at great cost, and its property, rights and franchises were duly mortgaged to secure its bonds duly issued, to the amount of forty thousand dollars, for the purpose of raising money necessary for the construction and operation of its said system; that such bonds were duly sold and all of the same are now outstanding and unpaid; that they are widely scattered in ownership and are largely held by women and persons of limited means as investment.

That thereafter the said plaintiff, having failed to receive an income from its plant equal to its fixed charges and operating expenses, became indebted unto divers persons and to pay off and extinguish such indebtedness, duly executed a second mortgage upon its property, rights and franchises, to secure its bonds duly issued, to the amount of ten thousand dollars, which bonds were thereafter sold, and all of the same are now outstanding and unpaid; that the present bonded indebtedness of plaintiff is fifty thousand dollars;

177 that its income does not exceed two thousand dollars per annum from private or individual consumers, and with no income derived from said village, the income derived from the operation of its plant is sufficient to pay its fixed charges, not to mention its operating expenses.

Plaintiff further alleges, that the works of the plaintiff were constructed under said franchise, for the purpose of supplying said village with pure and wholesome water, upon the conditions therein mentioned, and subject thereto, as the authorities of said village then knew and understood, for the benefit and advantage of said village and its inhabitants; that notwithstanding the premises aforesaid, and in violation of the rights, contracts and obligations thus created and existing between said plaintiff and the said village of Skaneateles, and without notice to this plaintiff, and without any proceeding to vacate or annul the said franchise of the plaintiff, or to dissolve the existing relations between the plaintiff and said village, the president of said village, did on or about the 21st day of March, 1896, appoint the defendants, Lemuel D. Hall, Edward Eckett, James A. Root and John L. Shultz, to be water commissioners of said village, having in contemplation the purpose of constructing for said village a water-works system of its own; that the said persons so appointed as water commissioners, immediately began to act, and have since continued to act, and are now acting as such.

That in pursuance of the purpose aforesaid, the said contract of said village with the plaintiff having expired on February

178 1st, 1896, the said authorities of said village refused and neglected to enter into any contract with said plaintiff to supply to said village any water for any of the public uses of said village, and the said village since about the 1st day of February, 1896, has had no special contract with the plaintiff for such purposes, nor any contract, except that made by said petition, franchise and the action of said village and the plaintiff thereunder.

That after the appointment of such persons to be water commissioners as aforesaid, said appointment was confirmed by the trustees of said village and immediately thereafter, and ever since, the said

persons so appointed have acted or assumed to act as water commissioners of and for said village; that they caused or assumed to cause a meeting of the electors of said village, to be called by the trustees of said village, in assumed pursuance of the provisions of chapter 181 of the Laws of 1875, and the acts amending the same, at which meeting the trustees of said village presided or presumed to preside under the provisions of said act, and obtained a vote, or assumed to obtain a vote, of persons entitled to vote under the provisions of said act in favor of a ballot having printed thereon "For the water taxes;" that after said vote, said defendants assuming to act as such water commissioners, proceeded with great haste in furtherance of said purpose and design, and have issued or caused to be issued, bonds of said village, and have sold the same, or some portion thereof, or are attempting to sell the same, and have entered into a contract
179 with some person or persons or corporations, to the plaintiff unknown, to contract for said village a water-works system to be operated in opposition to the water-works system of the plaintiff, or on behalf of said village; that the said person, persons or corporations are now actually engaged in the construction of said system of water works for said village, in violation of its said franchise, contracts and obligations with this said plaintiff after the election made by the said village, as hereinbefore set forth, all of which has been done without notice to the plaintiff and without any proceeding to vacate or annul the said franchises, or to dissolve the relations existing between said plaintiff and said village, and in violation of the provisions of section 10 of article 1 of the Constitution of the United States, and of section 6 and article 1 of the constitution of the State of New York.

That the construction and operation of said works by the said village, impairs and destroys the value of the plaintiff's said franchise and its contracts with said village, and practically destroys and confiscates its property and renders valueless the bonds of the said plaintiff, and inflicts great wrong and hardship upon the owners thereof; that the acts of said village in constructing said works are as against this plaintiff in violation of law, inequitable and wholly unauthorized.

That the plaintiff has no adequate remedy at law in the premises.

Wherefore, the plaintiff prays judgment in this action,
180 determining and adjudging that the acts of said village of Skaneateles, its president and trustees, and of said persons acting as water commissioners, as aforesaid, are void, and adjudging and determining that all the acts performed by the said village, president, trustees and persons so appointed water commissioners, in respect of the construction of water works for said village, have been illegal, void and in violation of the plaintiff's rights under its said franchise and contracts with said village.

And also adjudging and decreeing, that the defendants herein, and each of them, and each and every of their servants, attorneys, agents, contractors and employees, be forever restrained and prohibited from further proceeding with the construction of said water-works system, and from doing or suffering to be done any act or

thing whatsoever, in furtherance of the construction or operation of any system of water works for said village.

And the plaintiff further prays, that in the meantime and during the pendency of this action, the defendants, and each of them, and their agents, attorneys, servants, employees and contractors be restrained in the manner above set forth, until final judgment herein, and for such other, further or different relief, as may be just and equitable, and for the costs and disbursements of this action.

GEORGE BARROW,
Plaintiff's Attorney.

Office & P. O. address, Skaneateles, New York.

181 ONONDAGA COUNTY, *ss:*

George Barrow, being duly sworn, deposes and says: That he is the attorney for the plaintiff in this action; that he is a director and manager of said plaintiff, which is a domestic corporation; that the foregoing complaint is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

That this verification is not made by the plaintiff because the plaintiff is a domestic corporation, and cannot make the same; that deponent is an officer thereof, to wit: a director; that the grounds of deponent's belief as to all matters not stated in said complaint, upon his knowledge, are his inspection of the records of the defendant, The Village of Skaneateles, of the contracts and franchises therein mentioned, and information derived from the officers of the plaintiff, and from his personal relations to and with the plaintiff since the organization of said plaintiff.

GEORGE BARROW.

Sworn to before me, this 30th day of October, 1896.
JOHN L. SEAGER,
Notary Public, Onon. Co., N. Y.

182 Supreme Court, Onondaga County.

THE SKANEATELES WATER WORKS COMPANY, Plaintiff,
against
THE VILLAGE OF SKANEATELES, E. NORMAN LESLIE, as President of said Village; John Connell, Edwin Whiting, and Edward Dent, as Trustees of said Village, and Lemuel D. Hall, Edward Eckett, James A. Root, and John L. Shultz, as Water Commissioners of the Village of Skaneateles, Defendants.

The above-named defendants, for answer to the complaint of the plaintiff herein:

I.

Admit that the defendant is a corporation, as alleged in the complaint, and that ever since the 1st day of January, 1890, it has been and is now engaged in furnishing to the inhabitants of the village

of Skaneateles pure and wholesome water, and it avers that it has not furnished any water to said village since the 1st of February, 1896.

And further answering the defendants admit that the village of Skaneateles is a municipal corporation, and the defendants named in paragraph two of the complaint the president and trustees
183 of said village, and that the plaintiff was incorporated for the sole purpose of supplying the village of Skaneateles and its inhabitants with pure and wholesome water; that on July 5th, 1887, a petition was presented to the trustees of the village of Skaneateles, a copy of which is hereinafter set forth; that the franchise in the resolution mentioned in said complaint was accepted by the persons named in the application therefor, and that said persons or others thereafter organized a water works company, under the name of The Skaneateles Water Works Company, which is the plaintiff herein.

And further answering the said defendants admit and aver that thereafter a resolution was adopted by a part of the trustees of said village, a copy of which is set forth in the complaint. That the following is a copy of said petition:

The undersigned, having organized for the purpose of forming a water works company to supply the village of Skaneateles and its inhabitants with pure and wholesome water, hereby represent and set forth that the persons who propose to form such company are John E. Waller, George H. Wicks, Lewis B. Fitch, Edwin E. Hall, John K. Knox, John McNamara, Benjamin P. Petheram and George Barrow.

That the proposed capital stock of the company is forty thousand dollars, to be divided into four hundred shares of $100 each, and the source from which water is to be supplied is Skaneateles
184 lake in the State of New York, and the authorities of said village are hereby requested to consider this application to supply the said village and the inhabitants thereof with pure and wholesome water.

(Signed) JOHN E. WALLER.
GEORGE H. WICKS.
LEWIS B. FITCH.
EDWIN W. HALL.
JOHN K. KNOX.
JOHN McNAMARA.
BENJAMIN F. PETHERAM.
GEORGE BARROW.

And the defendants further answering aver upon information and belief that the source of supply proposed by the plaintiff in the said petition was the water of Skaneateles lake, and that it has supplied said village with water from that source; that said plaintiff was incorporated under and by virtue of chapter 737 of the Laws of 1873, and the acts of the legislature supplementary thereto and amendatory thereof; that it was provided by said act that companies incorporated thereunder should have no power to take the water from any of the canals of the State, or from canal reservoirs as feeders, or

any streams which have been taken by the State for supplying the canals with water; that said Skaneateles lake is a canal reservoir taken by the State for the purpose of supplying water to the Erie canal and that said water has been taken from said lake by
185 said plaintiff without authority on the part of said State, and in violation of the provisions of the act under which said plaintiff was incorporated, and that said plaintiff is now taking water from said lake in violation of the provisions of said act, and is not legally entitled to take water therefrom.

And the defendants admit that the plaintiff, previous to December, 1890, constructed a system of water works adequate for the purpose of supplying the said village and its inhabitants with pure and wholesome water, but said defendants deny that said plaintiff has fully and in all respects performed the conditions of its said franchise.

And said defendants admit that the plaintiff entered into a contract with the said village, for supplying said village with water for fire protection, sanitary and municipal purposes, for the term of five years from February 1, 1891, at the rate of $30.00 per hydrant per annum, and that said plaintiff performed said contract on its part until the same expired by limitation on the 1st day of February, 1896; and the defendants upon information and belief deny that the plaintiff has ever since been ready and willing to furnish water by its hydrants to said village, at the rate mentioned in said resolution, and that the plaintiff has never been asked to furnish its hydrants or any water to said village, for any purpose, since the expiration of said contract; that the plaintiff has never refused to furnish water to said village for fire protection or other
186 purposes and on the contrary thereof aver that at the expiration of said contract the plaintiff refused to renew the same and furnish water at the rate of $40.00 per hydrant per annum, as required by said resolution of said village and said franchise, but insisted that the said village should pay to said plaintiff the sum of $50.00 per hydrant per annum for said water in the future; that said village refused to pay said sum of $50.00 per hydrant, but was then ready and willing to pay said plaintiff $40.00 per hydrant per annum for the use of said water, and to renew said contract for the period of five years at that rate; that said plaintiff refused to furnish water at said price of $40.00 per hydrant per annum, and thereupon cut off the water supply of said village and the use of the hydrants therein; that the defendants and inhabitants of said village thereupon determined to establish a system of water works owned by said village, as they lawfully might, and have since been duly engaged in establishing the same, except so far as they have been restrained by injunctions of this court obtained by the plaintiff.

And the defendants admit that the water the plaintiff furnished is taken from Skaneateles lake, and that no complaint has been made in regard to the character of the water, or in regard to its efficiency for fire purposes or for municipal or sanitary purposes, when the same has been furnished by the plaintiff.

187 And further answering the defendant- admit and aver that when said franchise was granted by said village and plaintiff was organized, the village was not supplied with a system of water works, and that it was then authorized and empowered by law, and has ever since been so authorized and empowered, to construct and operate a system of water works of its own, for supplying to itself and its inhabitants pure and wholesome water, and it was then likewise authorized and has ever since been authorized to contract with private companies to furnish to it and its inhabitants pure and wholesome water, at any time said village saw fit to do so.

And said defendants also upon information and belief deny that said village at any time made any election to grant a franchise to a private company or plaintiff instead of establishing works of its own, and also upon information and belief deny that in pursuance of any election on the part of the village it granted the franchise mentioned in the complaint and, also ordering that the plaintiff was organized under and upon the faith of any election on the part of the village to supply itself with water through said plaintiff.

And further answering the defendants upon information and belief deny that in violation of any right, contract or obligation created or existing between the plaintiff and the village of Skaneateles, certain water commissioners were duly appointed on or about the 2nd day of March, 1896, as alleged in said complaint, for the

188 purpose of constructing for said village a water-works system of its own, but they admit and aver that said persons so appointed immediately thereafter duly began to act and have ever since continued to act, and are now acting as such water commissioners, and that they were appointed without notice to the plaintiff.

And further answering said defendants admit on information and belief, that no action has been brought to vacate or annul the franchise of the plaintiff, or to dis-olve the existing relations between plaintiff and the village, but it avers that the said defendants were entitled so to do, and to treat said franchise as rescinded by reason of the failure and refusal of the plaintiff to perform the conditions of said franchise; and also aver upon information and belief that said village, at any and all times since the granting of said franchise, has been lawfully entitled to construct a system of water works of its own, and to furnish water to itself and its inhabitants, and that said plaintiff has not now and never has had since the granting of said franchise, exclusive right to furnish water to said village and its inhabitants.

And further answering the defendants upon information and belief deny that when said contract of said village with the plaintiff expired on February 1, 1896, the said authorities of said village refused and neglected to enter into a contract with said plaintiff to supply to said village any water for the public uses of said

189 village, and also deny upon information and belief that any contract was ever made between the plaintiff and said village, by the petition and franchise of the plaintiff or any action of the village thereunder, except said contract which expired on the 1st day of February, 1896; and upon information and belief aver that

said plaintiff refused to enter into any contract to supply water to said village, except at the rate of $50.00 per hydrant, and in violation of the conditions of said franchise, except that after such refusal and the plaintiff had cut off the water supply of said village, and said village had instituted proceedings to construct water works of its own, said plaintiff offered to supply water to said village for a period of five years, at the rate of $40.00 per hydrant, but refused to supply the same for any less sum.

And the defendants admit and aver upon information and belief that the defendant water commissioners were duly appointed and confirmed, and have ever since acted as such; that a meeting of the electors of said village was duly called by the trustees of said village, in pursuance of the provisions of chapter 181 of the Laws of 1875, and other acts of the legislature, at which meeting the trustees of said village duly proceeded under the provisions of said acts, and duly obtained a vote of the persons entitled to vote under the provisions of the same, in favor of the ballot having printed thereon

"For the water taxes," and that after said vote said defend-
190 ants acting as such water commissioners, have issued or caused to be issued bonds of said village, and have sold the same or some portion thereof, and have entered into a contract to construct for said village a water-works system to be operated by said village on its own account; and that such persons and corporations are now actually engaged in the construction of a system of water works for said village; but they deny on information and belief that any of the said acts of said village were in violation of any franchise, contract or obligation with the plaintiff, or that there was any election made by said village, or that any notice was required to the plaintiff, or any proceedings to vacate or annul the franchise granted to the plaintiff, or that there were any resolutions existing between the plaintiff and said village requiring to be dissolved, or that the proceedings of said village mentioned in the complaint were in violation of section 10 of article 1 of the constitution of the State of New York, and each and every other allegation of that nature in said complaint contained.

And the defendants further deny upon information and belief, that the contract for the operation of water works by said village impairs or destroys the value of any franchise that the plaintiff has with said village.

And the defendants further aver upon information and belief that the resolution adopted by said village authorizing the plaintiff to

supply the village and its inhabitants with water, contem-
191 plated that the rights conferred by said resolution should not be sold or transferred by the applicants therefor to non-residents of the village of Skaneateles; that in violation of such condition the plaintiff, a domestic corporation, was organized by the persons named in said application; that thereafter, in violation of the conditions of said resolution, the stock of said corporation was sold and transferred to non-residents of the village of Skaneateles; that at the time of the termination of said contract on the 1st day of February, 1896, a majority of the capital stock of the plaintiff had been

sold to one Hawley, a non-resident of the village of Skaneateles and of the State of New York, and a majority of the trustees of said plaintiff had become and were non-residents of the village of Skaneateles.

And the defendants further aver that they have not any knowledge or information sufficient to form a belief, as to the allegations contained in the complaint herein, nor hereinbefore denied or admitted, and therefore deny the same.

II.

And for a second and separate answer herein, the defendants aver upon information and belief that the plaintiff ought not to have or maintain this action, because that at the time of the commencement thereof there was another action pending in this court between the same parties for the same relief, and upon the same grounds,
192 which action is still pending and undisposed of, the defendants having answered therein.

Wherefore, defendants demand judgment that the complaint herein be dismissed, with costs.

M. F. DILLON,
Defendants' Attorney.

Office and post-office address, Eckett block, Skaneateles, N. Y.

STATE OF NEW YORK, }
County of Onondaga, } ss:

E. Norman Leslie, being duly sworn, deposes and says that he is one of the defendants in the above-entitled action, and the president of the village of Skaneateles; that he has read the foregoing answer and knows the contents thereof, and that the same is true to his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

E. NORMAN LESLIE.

Sworn to before me, this 20th day of November, 1896.

WM. G. STUART,
Notary Public.

STATE OF NEW YORK, }
County of Onondaga, } ss:

193 Edward Whiting, being duly sworn, deposes and says that he is one of the defendants in the above-entitled action, and one of the trustees of the village of Skaneateles; that he has read the foregoing answer and knows the contents thereof, and that the same is true to his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true; that the defendants E. Norman Leslie, John Connell, Edwin Whitney and Edward Dent are parties united in interest in this action, individually and as officers of the village of Skaneateles.

EDWIN WHITING.

Sworn to before me, this 20th day of November, 1896.

WM. G. STUART,
Notary Public.

STATE OF NEW YORK, }
County of Onondaga, } ss.:

James A. Root, being duly sworn, deposes and says that he is one of the defendants in the above-entitled action, and one of the water commissioners of the village of Skaneateles; that he has read the foregoing answer and knows the contents thereof, and that the same is true to his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true; that the defendants
194 Lemuel D. Hall, Edward Eckett, James A. Root and John L. Shultz, individually and as water commissioners of the village of Skaneateles, are parties united in interest in the above-entitled action.

JAMES A. ROOT.

Sworn to before me, this 20th day of November, 1896.

WM. G. STUART,
Notary Public.

Supreme Court, Onondaga County.

THE SKANEATELES WATER WORKS COMPANY, Plaintiff,
vs.
THE VILLAGE OF SKANEATELES and Others, Defendants.

On filing the stipulation hereto annexed it is

Ordered, that the above-entitled action be and the same is hereby referred to John W. Hogan, Esq., of the city of Syracuse, N. Y., to hear, try and determine the same.

Enter.

F. H. H.

(Endorsed:) Filed Dec. 5, 1896.

195 Supreme Court.

SKANEATELES WATER WORKS COMPANY
against
THE VILLAGE OF SKANEATELES, E. NORMAN LESLIE, as President of said Village and Individually; John Connell, Edwin Whiting, and Edward Dent, as Trustees of said Village and Individually; Lemuel D. Hall, Edward Eckett, James A. Root, and John L. Shultz, Individually, as Water Commissioners of the Village of Skaneateles.

To the supreme court:

The undersigned, duly appointed by an order of this court referee to hear, try and determine the issue in the above-entitled action, respectfully reports:

I have been attended by counsel for the respective parties hereto

have heard proofs and allegations, and considered the argument of counsel, and find

As Matters of Fact.

1. That the plaintiff at the several times mentioned and referred to in the complaint in this action was and still is a domestic corporation, organized pursuant to the provisions of chapter 737 of the Laws of 1873, and the acts amendatory of the same and supplemental thereto.

2. The defendant, The Village of Skaneateles, is a mu-
196 nicipal corporation, the defendant, E. Norman Leslie, is the president of said village, and the defendants John Connell, Edwin Whiting and Edward Dent were at the time of the commencement of this action trustees of said village.

3. That on or about April 5th, 1887, the defendant, The Village of Skaneateles, granted a franchise to the plaintiff herein to maintain and operate within the village of Skaneateles a system of water works for furnishing to said village and its inhabitants pure and wholesome water, upon certain terms and conditions therein referred to, namely:

That the said company should have its works in general operation within said village within two years from the 1st day of December, 1887.

That said company should not charge or collect from said village at any time a greater sum than $40.00 per annum for each hydrant furnished for the use of said village, and that at that rate should furnish all hydrants required by said village at such places as should be designated by its trustees.

That the rights conferred should not be sold or transferred to non-residents of the village of Skaneateles.

4. The village of Skaneateles by resolution of its board of trustees at a meeting regularly and duly held thereafter renewed the franchise theretofore granted to said plaintiff, and extended the time for the completion of the work by said plaintiff of its plant until December 1st, 1890.

197 5. That in or about the year 1889 the plaintiff constructed under and in pursuance of the power so granted a system of water works for supplying the village of Skaneateles and its inhabitants with pure and wholesome water.

Prior to that time the village of Skaneateles was not supplied with water by any company or corporation, nor did it possess any system of its own.

That the system of water works so constructed and completed as aforesaid, by plaintiff, was and at all times since has been and now is a complete and adequate system. Said corporation has laid pipes in substantially every street of said village. No complaint has been made that the water furnished by said plaintiff has not been pure and wholesome, or that the sufficiency thereof has not been adequate, or that the pressure thereof has not been adequate for fire protection and all other purposes.

That the source from which said corporation procures its water is

Skaneateles lake, which is the only source from which water can be obtained for supplying and furnishing the village and its inhabitants with pure and wholesome water thus far discovered.

6. That the plaintiff has incumbered its property by two several mortgages, one to secure the payment of $40,000 worth of bonds, executed about the 22nd day of August, 1890; and the other executed about the 1st day of February, 1895, to secure the payment of $10,000 worth of bonds issued by said company, which said bonds and mortgages securing the same are now outstanding against the plaintiff herein.

198 7. That on or about the 1st day of February, 1891, a contract was entered into between the plaintiff and the village of Skaneateles, whereby the plaintiff undertook with said village to supply the water for forty (40) hydrants in said village and for other purposes, for the sum of $30 each per annum; that said contract expired on the 1st day of February, 1896, and was not renewed.

8. That prior to said special election and after the publication of the notice thereof, the plaintiff herein offered to renew the contract with the village of Skaneateles for hydrant rentals according to the price regulated in the first contract, at $40 per hydrant per annum for five years, and at $30 per hydrant per annum for a term of years thereafter.

9. That without any proceeding to vacate or annul the franchise of the plaintiff, or to dissolve the corporation, the defendant, Leslie, as president of the village of Skaneateles, did on or about the 21st of March, 1896, appoint the defendants, Hall, Eckett, Root and Shultz, to be water commissioners of the said village, having in contemplation the purpose of constructing for said village a water-works system of its own.

That the said persons so ap-ointed as water commissioners entered upon the performance of their duties, and have been acting as such. The appointment was confirmed by the trustees of said village, and the said water commissioners having duly qualified, caused

199 a meeting of the electors of the village to be called by the trustees of the village in pursuance of the provisions of chapter 181 of the Laws of 1875, and a vote was taken at said meeting, the result of which was favorable, to municipal ownership, and after said election the said water commissioners issued or caused to be issued bonds of said village to the amount of $30,000 and sold the same for par and accrued interest.

10. That said board of water commissioners of the said village of Skaneateles entered into a contract for the construction of a water-works system for said village, and have expended thereon about the sum of $24,000 and said works are substantially completed.

11. That all of the proceedings were taken without instituting any proceeding to condemn the property of the plaintiff herein, although the plaintiff offered to participate in a proceeding looking towards the condemnation of its property.

12. That the works of the plaintiff were constructed at a large expense, and its property rights and franchise mortgaged to secure its bonds duly issued, and the income of the plaintiff from the oper-

ation of its plant has at various times been insufficient to meet its outgoing expenses, and will be insufficient to meet its outgoing expenses when it shall cease to furnish water to the village of Skaneateles.

As Conclusions of Law.

200 1. The village of Skaneateles was not required to institute proceedings to condemn the property of the plaintiff before commencing the construction of a water-works system for the use of said village.

2. The consent of the village of Skaneateles to the organization of the plaintiff as a water works company, and the making of a contract by the village of Skaneateles with the plaintiff for the supply of pure and wholesome water, did not vest in plaintiff the exclusive right to furnish said village with water, or prevent the village from gra-ting to another corporation the right to supply water within said village or the village from constructing and maintaining a water-works system to supply itself with water.

3. Subsequent to February 1st, 1896, no contractual relations existed between the plaintiff and the village of Skaneateles, and the village was not under legal obligation to enter into any contract with the plaintiff after that date, or to continue to take water from the plaintiff; but was entitled to construct and maintain a water-works system of its own.

4. The defendants are entitled to judgment herein dismissing the complaint upon the merits with costs, and judgment is ordered accordingly.

JOHN W. HOGAN, *Referee.*

201 Supreme Court, Onondaga County.

THE SKANEATELES WATER WORKS COMPANY
against
THE VILLAGE OF SKANEATELES, E. NORMAN LESLIE, as President of said Village; John Connell, Edwin Whiting, and Edward Dent, as Trustees of said Village, and Lemuel D. Hall, Edward Eckett, James A. Root, and John L. Shultz, as Water Commissioners of the Village of Skaneateles.

The plaintiff, The Skaneateles Water Works Company, makes, files and serves the following exceptions to the report of John W. Hogan, Esq., referee, before whom the issues herein were tried, filed May 25, 1897.

1. Said plaintiff excepts to the conclusion of law numbered 1 in said report, to wit: that "the village of Skaneateles was not required to institute proceedings to condemn the property of the plaintiff before commencing the construction of the water-works system for the use of said village."

2. Said plaintiff excepts to the conclusion of law numbered 2 in said report, to wit: that "the consent of the village of Skaneateles to the organization of the plaintiff as a water works company, and

the making of the contract by the village of Skaneateles with that plaintiff for the supply of pure and wholesome water did not
202 vest in the plaintiff the exclusive right to furnish said village with water, or prevent the village from granting to another corporation the right to supply water within said village, or the village from constructing and maintaining a water-works system to supply itself with water."

3. Said plaintiff excepts to so much of the conclusion of law numbered 2 in said report as holds that the consent of the village of Skaneateles to the organization of the plaintiff as a water works company and the making of the contract by the village of Skaneateles with the plaintiff for the supply of pure and wholesome water did not prevent the village from constructing and maintaining a water-works system to supply itself with water.

4. Said plaintiff excepts to the conclusion of law numbered 3 in said report, to wit: that "subsequent to February 1, 1896, no contractual relations existed between the plaintiff and the village of Skaneateles and the village was not under legal obligation to enter into any contract with the plaintiff after that date, or to continue to take water from the plaintiff, but was entitled to construct and maintain a water-works system of its own."

5. Said plaintiff excepts to so much of the conclusion of law numbered 3 in said report as holds that subsequent to February 1, 1896, the village of Skaneateles was entitled to construct and maintain a water-works system of its own.

6. Said plaintiff excepts to the conclusion of law numbered
203 4 in said report, to wit: that "the defendants are entitled to judgment herein dismissing the complaint upon the merits; with costs. And judgment is ordered accordingly."

GEORGE BARROW,
Plaintiff's Attorney, Skaneateles, N. Y.

To M. F. Dillon, Esq., attorney for defendants; and to the county clerk of the county of Onondaga.

Supreme Court, Onondaga County.

THE SKANEATELES WATER WORKS COMPANY, Plaintiff,
against
THE VILLAGE OF SKANEATELES, E. NORMAN LESLIE, as President of said Village; John Connell, Edwin Whiting, and Edward Dent, as Trustees of said Village, and Lemuel D. Hall, Edward Eckett, James A. Root, and John L. Shultz, as Water Commissioners of the Village of Skaneateles, Defendants.

The issues joined in the above-entitled action having been duly referred to John W. Hogan, Esq., as sole referee to hear and determine by an order of this court in the above action bearing date the 3rd day of December, 1896, and the said referee having duly
204 made and filed his report in writing whereby he finds that the complaint in this action should be dismissed upon the merits with costs to the defendants against the plaintiff.

Now, on motion of M. F. Dillon, attorney for the defendants, it is Ordered and adjudged, that the complaint in this action be, and the same is dismissed upon the merits and that the defendants herein recover of the plaintiff, The Skaneateles Water Works Company the sum of $372.11 taxed costs and disbursements of this action.

GEO. J. YAECKEL, *Clerk.*

Supreme Court, Onondaga County.

THE SKANEATELES WATER WORKS COMPANY, Plaintiff,
against
THE VILLAGE OF SKANEATELES, E. NORMAN LESLIE, as President of said Village; John Connell, Edwin Whiting, Edward Dent, as Trustees of *of* said Village, and Lemuel D. Hall, Edward Eckett, James A. Root, and John L. Shultz, as Water Commissioners of the Village of Skaneateles, Defendants.

Please take notice, that the plaintiff appeals to the appel-
205 late division (fourth department) of this court from the judgment of this court herein, entered in the office of the clerk of the county of Onondaga on the 17th day of July, 1897, in favor of the defendants, dismissing the complaint in this action and for $372.11, costs and disbursements thereof, and from each and every part of said judgment. This appeal is taken both upon questions of law and upon the facts.

Yours, &c.,

GEORGE BARROW,
Attorney for Plaintiff and Appellant, Skaneateles, N. Y.

To the clerk of the county of Onondaga, and to M. F. Dillon, Esq., attorney for defendants and respondents.

It is hereby stipulated that the foregoing copies of notice of appeal, judgment-roll, exceptions to the referee's report, and of case and exceptions, are true copies of the originals and of the whole of said originals, filed or entered in Onondaga county clerk's office in the above-entitled action, and further certification thereof is waived.

GEORGE BARROW,
Plaintiff's Attorney, Skaneateles, N. Y.
M. F. DILLON,
Defendants' Attorney, Skaneateles, N. Y.

206 COUNTY OF ONONDAGA, *ss:*

George Barrow, being duly sworn says I am the attorney for the plaintiff in this action. The referee before whom the same was tried, as I am informed and believe, wrote no opinion thereon.

GEORGE BARROW.

Sworn to before me, this 1st day of June, 1898.

F. E. STONE,
Notary Public.

207 Supreme Court, Appellate Division, Fourth Judicial Department.

CLERK'S OFFICE, ROCHESTER, N. Y.

I, Newell C. Fulton, clerk of the appellate division of the supreme court in the fourth judicial department, do hereby certify that the following is a copy of the order made by said court upon the appeal in the above-entitled action or proceeding and entered in my office on the 7th day of October, 1898, and that the original case or papers upon which said appeal was heard are hereunto annexed.

In witness whereof I have hereunto set my hand and af-
[L. S.] fixed the seal of said court at the city of Rochester, this 14th day of October, 1898.

NEWELL C. FULTON, *Clerk.*

208 At a term of the appellate division of the supreme court of the State of New York in and for the fourth judicial department at the city of Rochester on the 7th day of October, 1898.

Present: Hon. George A. Hardin, presiding justice. Hon. David L. Follett, Hon. William H. Adams, Hon. Manley C. Green, Hon. Hamilton Ward, associate justices.

THE SKANEATELES WATER WORKS CO., Appellant,
vs.
THE VILLAGE OF SKANEATELES ET AL., Respondents.

The above-named plaintiff and appellant in this action having appealed to the appellate division of the supreme court from a judgment of the supreme court entered in the office of the clerk of the county of Onondaga on the 17th day of July, 1897, and the said appeal having been argued by Mr. Charles A. Hawley of counsel for the appellant and by Mr. William G. Tracy of counsel for the respondent and due deliberation having been had thereon it is hereby ordered and adjudged that the judgment so appealed from be and the same is hereby affirmed and the respondent recover of the appellant the costs of this appeal. See Syracuse Water Com-
209 pany *vs.* City of Syracuse, 116 N. Y., 167. Matter of City of Brooklyn, 143 N. Y., 596. Warsaw Water Company *vs.* Village of Warsaw, 16 App. Div., 502. Colby University *vs.* Village of Canandaigua, 69 Fed. Rep., 671. The Canandaigua Water Works Company *vs.* The Village of Canandaigua, 90 Hun., 605.

All concur.

[L. S.] NEWELL C. FULTON, *Clerk.*

Supreme Court, Appellate Division, Fourth Department.

THE SKANEATELES WATER WORKS CO., Appellant,
against
THE VILLAGE OF SKANEATELES, E. NORMAN LESLIE, as President of said Village; John Connell, Edwin Whitney, Edward Dent, as Trustee of said Village, and Lemuel D. Hall, Edward Eckett, James A. Root, and John L. Schultz, as Water Commissioners of the Village of Skaneateles, Respondents.

Judgment October 7th, 1898.

The appeal taken by the plaintiff in the above-entitled
210 action to the appellate division of the supreme court of the fourth judicial department from the judgment of the supreme court herein entered in the clerk's office of the county of Onondaga on the 17th day of July, 1897, having been brought on for argument before said appellate division at the term of said division commencing on the 20th day of September, 1898, and said appellate division having made and filed its order and judgment affirming said judgment appealed from with costs to the respondents against the appellant. Now, on motion of Martin F. Dillon, attorney for the respondents it is ordered and adjudged that said judgment appealed from be and the same is hereby affirmed and that the respondents, The Village of Skaneateles, E. Norman Leslie, as president of said village; John Connell, Edwin Whiting, Edward Dent, as trustees of said village, and Lemuel D. Hall, Edward Eckett, James A. Root and John L. Shultz, as water commissioners of the village of Skaneateles, recover of the appellant, The Skaneateles Water Works Company, the sum of $81.40, taxed costs and disbursements of said appeal.

GEO. J. YAECKEL, *Clerk*.

Endorsed: Filed Oct. 18, 1898, at 9.20 a. m.

211 Supreme Court, Onondaga County.

THE SKANEATELES WATER WORKS CO., Appellant,
against
THE VILLAGE OF SKANEATELES, E. NORMAN LESLIE, as President of said Village; John Connell, Edwin Whiting, Edward Dent, as Trustees of said Village, and Lemuel D. Hall, Edward Eckett, James A. Root, and John L. Shultz, as Water Commissioners of the Village of Skaneateles, Respondents.

Take notice that the above-named The Skaneateles Water Works Company hereby appeals to the court of appeals from the judgment entered in the office of the clerk of the county of Onondaga on the 18th day of October, 1898, upon the determination of the appellate division of the supreme court, fourth department for $81.40 costs, and which judgment and determination affirmed a judgment entered

in the office of the clerk of the county of Onondaga on the 17th day of July, 1897, dismissing the complaint and for $372.11 costs and disbursements, to the defendants against the plaintiff and
212 from each and every part of said judgment so as aforesaid entered October 7th, 1898.

Dated November 5th, 1898.

Yours, &c.,

GEORGE BARROW,
Att'y for Pl'ff and App'l't.

Office and P. O. address, Skaneateles, N. Y.

To M. F. Dillon, attorney for defendants and respondents, Skaneateles, N. Y., and to George J. Yaeckel, clerk of the county of Onondaga.

(Endorsed:) Filed Nov. 11, 1898.

213 Supreme Court.

THE SKANEATELES WATER WORKS CO., Appellant,
vs.
THE VILLAGE OF SKANEATELES ET AL., Respondents.

ONONDAGA COUNTY, *ss:*

George Barrow, being duly sworn, says he is the plaintiff's attorney in this action; that the appellate division of the supreme court wrote or rendered no opinion herein except as the same is contained in its decision herein, as deponent is advised and believes, and which decision constitutes a part of the record on this appeal.

GEORGE BARROW.

Sworn to before me this 24th day of Dec., 1898.

E. C. MILLER,
Notary Public, Onondaga County.

214 Supreme Court.

THE SKANEATELES WATER WORKS CO., Appellant,
vs.
THE VILLAGE OF SKANEATELES ET AL., Respondents.

It is hereby — that the foregoing is a correct and true copy of the evidence, rulings, exceptions, exhibits, judgment-roll, notice of appeal to the appellate division, order of affirmance of the appellate division, judgment of the supreme court thereon, affidavit of no opinion by the appellate division and notice of appeal to the court of appeals in the above-entitled action, all of which papers have been duly filed in the Onondaga county clerk's office, and that the same shall constitute the true record on which to review this case on appeal.

Dated December 29th, 1898.

M. F. DILLON,
Attorney for Respondents.
GEORGE BARROW,
Attorney for Appellant.

STATE OF NEW YORK, }
Onondaga County Clerk's Office, } *ss:*

I, George J. Yaeckel, clerk of said county, and of the supreme and county courts therein, which are courts of record, do hereby certify that I have compared the foregoing copies of case & exceptions, judgment & notice of appeal with the originals thereof which are now remaining on file in this office, and that the same are correct transcripts of said originals, and of the whole thereof, and of the endorsements thereon.

Seal Onondaga County.

In witness whereof, I have hereunto set my hand and affixed the seal of said county and courts, at the city of Syracuse, this 20 day of July, 1900.

GEO. J. YAECKEL, *Clerk.*

[Ten-cent United States internal-revenue stamp canceled.]

215 PARKER, *Ch. J.:*

The plaintiff, a domestic corporation, organized pursuant to the provisions of chap. 737 of the Laws of 1873, and the acts amendatory thereof and supplemental thereto, brought this action for the purpose of obtaining a permanent injunction against the Village of Skaneateles, its president, trustees and water commissioners (whom, for convenience, we shall refer to in the course of this opinion as the village), restraining them from constructing and operating in the village of Skaneateles an independent system of water works, for the purpose of supplying it and its inhabitants with water.

Such steps were taken on or about the 5th day of April, 1887, by the Village of Skaneateles as, in conjunction with the acts of the plaintiff, operated to vest in the latter a franchise to maintain and operate within its corporate limits a system of water works for furnishing to the village and its inhabitants pure and wholesome water upon certain terms and conditions, which, in effect, were that the company should have its works in general operation by the 1st day of December, 1889; that it should not charge or collect at any time a greater sum than forty dollars per annum for each hydrant; that at such rate it should furnish all the hydrants required by the village, and should not sell or transfer to non-residents of Skaneateles the rights acquired by the granting of the franchise. The works were not completed within the time provided for, but before the expiration of such period the trustees of the village of Skaneateles passed a resolution extending the time for the completion of the works until December 1st, 1890, and declared that thereby the franchise theretofore granted to the plaintiff was renewed. Within the period of time designated by the latter resolution the works were completed and the plaintiff commenced to supply the village and its inhabitants with water and so continued under its contract for a period of about five years, at which time the contract
216 with the village expired and was not renewed. Whether the record discloses the real reason for the refusal of the village to renew the contract is open to doubt, but the evidence indicates

that the plaintiff having found that it had lost money, foolishly asked for ten dollars more per hydrant than it was entitled to charge under the terms of the grant by which the franchise was created. This was the first mistake, but not the only one in the chapter of errors which led to the appointment of a board of water commissioners in pursuance of chapter 181 of the Laws of 1875, who thereupon took the necessary steps to have a special election held for the purpose of voting upon the proposition to construct an independent system of water works for the village. The vote was largely in favor of an independent system, and the water commissioners proceeded at once to secure such a system. The situation presented to the water commissioners is described in the findings of the learned referee as follows: "The system of water works so constructed and completed as aforesaid, by plaintiff, was, and at all times since has been and now is, a complete and adequate system. Said corporation has laid pipes in substantially every street of said village; no complaint has been made that the water furnished by said plaintiff has not been pure and wholesome, or that the sufficiency thereof has not been adequate, or that the pressure thereof has not been adequate for fire protection and all other purposes." They further say that the source from which the plaintiff obtained its water, namely, Skaneateles lake, was the only source from which water could be obtained for supplying and furnishing the village and its inhabitants with pure and wholesome water. Necessarily, therefore, it was apparent that the public health could not be advantaged by an additional system of water works, and that there were no public interests requiring it; and as the statute under which the village was proceeding to acquire a system of water works
217 of its own permitted the acquisition of the plaintiff's water works, rights and franchises by condemnation proceedings, it would seem to the average mind that common fairness, if not common honesty, should have dictated that course. It is true that the village offered to pay to the plaintiff $24,000 for its property, a property mortgaged for $50,000, but the plaintiff declined to take that sum, and instead requested the defendant to take its property by condemnation proceedings, as the statute authorized. So anxious was the plaintiff to have that course taken, that it even offered to pay all the expenses of such a proceeding, except the defendant's counsel fees; but the village could not avail itself of the permission of the statute, or of the invitation of the plaintiff, and for an excuse for such an unconscionable performance says that it might have been compelled by a proceeding in court to pay to the plaintiff something more than the actual cost of duplicating its works; in other words, it feared that the court might hold that the franchise had some value, and that the money lost during the years required to educate the people up to the desirability of taking water should be compensated for.

It is the experience of all attempts to introduce water into villages and small cities that the number of individual patrons at the outset is very small, because their houses are not piped, and they are without bath-tubs and other appliances which go with the use of

water supplied under pressure. The houses erected after the construction of water works are, of course, made ready for connection with the pipes of the company; but the old houses are brought in very slowly; many never come in, while a small percentage of the others are brought in each year, as the owners find themselves able to enjoy the luxury afforded by the water system, or as they may be persuaded that the necessary expense ought to be incurred for reasons of health or comfort. This means in almost all cases
218 losses for the first few years, until a sufficient number of people have become patrons to put the plant on a paying basis. The theory of the defendant seems to be that the proper way to treat such a corporation as the plaintiff, promoted in this instance, as it appears, by defendant's citizens, is to let it go on and build water works, losing money each year while it educates the people up to the point of using the water, until years have passed away and the plant has at last come to a paying basis, and then duplicate its plant and take over a paying business for the simple cost of the construction of new works, and it claims the permission of the legislature to take that very course.

On the other hand, the appellant urges that the statute authorizing villages to supply themselves with water and permitting the acquisition of the works of any private corporation that may be supplying such municipalities with water, also makes it the duty of the water commissioners to acquire the property of the existing corporation or corporations. But after a very careful examination of the statute it seems to us very clear that this is not so.

It is probable that the legislature mistakenly assumed that such authorities would not act unjustly or oppressively, but would recognize the property rights of others. Be that as it may, the right to determine whether the property of an existing water works corporation should be taken or not, is clearly submitted to the determination of the local authorities. The refusal of the defendant, therefore, to acquire the plaintiff's property by proceedings *in invitum* does not tend to support the plaintiff's claim for an injunction. The defendant has done precisely what the statute authorizes, and all that remains for the court to determine is whether the act was within the legislative power, or void because in contravention of the organic law. Our first inquiry naturally is as to the nature of the
219 rights acquired by the plaintiff under and by virtue of the franchise granted to it. The answer is readily to be found in the decisions of this court in Syracuse Water Co. *v.* City of Syracuse (116 N. Y., 167), and Matter of the City of Brooklyn (143 N. Y., 596). Indeed, the principle was settled in Charles River Bridge *v.* Warren Bridge (11 Peters, 548), where it appeared that the legislature of Massachusetts, after passing an act incorporating the plaintiff for a term of years, with power to erect a bridge and collect the tolls, etc., subsequently incorporated the defendant with power to erect another bridge very near the first; the act provided that after the expense of the construction of the first bridge had been reimbursed to its promoters, it should be surrendered to the State and become a free bridge. It was insisted that the act incorporating the

defendant impaired the obligation of the contract between the State and the plaintiff, and was, therefore, in violation of section 10 of the Constitution of the United States, providing that no State shall pass any law impairing the obligation of contracts. While the court was divided upon the question whether there could be implied from the contract on the part of the State an agreement not to authorize, contiguous to that of the Charles River bridge, another bridge, which would ultimately become free and thereupon render the plaintiff's bridge of little or no value, the majority of the court agreed that the contract between the State and the plaintiff was not exclusive, and that an agreement not to authorize the erection of another bridge could not be implied by reason of the settled rules of construction of statutes adopted under the system of jurisprudence which we have derived from the English law, viz: that public grants are to be construed strictly so as to prevent rights from being taken from the public, or given to a corporation, beyond those which the words of the grant, by their ordinary construction, convey.

220 The doctrine of that case has been accepted by this court and frequently applied, as in Auburn & Cato Plank Road Co. *v.* Douglass (97 N. Y., 444); Chenango Bridge Co. *v.* Binghamton Bridge Co. (27 N. Y., 87); Power *v.* Village of Athens (99 N. Y., 592); Syracuse Water Co. *v.* City of Syracuse (116 N. Y., 167), and Matter of the City of Brooklyn (143 N. Y., 596).

In the Syracuse case, the plaintiff was incorporated by chap. 234 of the Laws of 1849 for the purpose of furnishing water to the city and its inhabitants, and this it did from the time of its creation down to about the time of the commencement of the action, which was brought for the purpose of restraining the defendant, The City of Syracuse, from granting to the Central City Water Company the right to place pipes and other constructions in the city of Syracuse with the view to supply it and its inhabitants with water. The plaintiff's charter provided that it should, when requested, furnish water to the common council of the city for the extinguishment of fires and other purposes, on terms to be agreed upon between them, and in case they should not agree, a provision was made for a determination of the disagreement by commissioners to be appointed by the supreme court; the charter also provided that any time after the expiration of the twenty years the common council should have the right to assume all the property rights, powers and franchises of the company on paying to it an amount to be ascertained by a method prescribed. For nearly forty years the Syracuse Water Company continued to furnish water for the city and its inhabitants, and then, in pursuance of chap. 85 of the Laws of 1880, the Central City Water Company was incorporated, and in its articles of incorporation the object of its creation was declared to be to supply the city of Syracuse and adjacent villages with pure and wholesome water for domestic use, for fire protection and other public

221 purposes. The common council of the city thereupon adopted a resolution authorizing such company to construct and operate water works in the city of Syracuse for the purpose of supplying it and its inhabitants with water.

It was contended by the Syracuse Water Company in this court that the provision in the grant requiring the company on request to furnish water to the municipality, was in legal effect requiring the company to furnish and the city to take water for fire and other public purposes, but it was decided otherwise. The grant to the water company was held to give to it the privilege of supplying all the water that the city or its inhabitants might wish to take, but not with the right to supply them all the water that they might care to use.

The doctrine of that case was adopted and approved in Matter of City of Brooklyn (*supra*), which was a special proceeding instituted for the purpose of acquiring the property and franchises of the Long Island Water Supply Company. The commissioners of appraisal refused to hold that such company had an exclusive right to furnish water to the territory supplied by it. This position was sustained in this court on the ground that the franchise granted was not exclusive.

Under the settled law of this State, therefore, the franchise that the plaintiff here acquired was not exclusive and did not prevent the village from proceeding under the act of 1873, and the acts amendatory thereof, to grant a franchise to another corporation to construct water works in the village, and at the same time contract with it to take such water as the village should need for fire protection and other public purposes. Indeed, the appellant concedes this to be so, but at the same time insists that the attempt of the village to perform such service for itself presents a very different question, for while the effect of granting a franchise to another corporation might be to impair and possibly ultimately to destroy the
222 value of its plant, the construction and operation of water works by the village, it is argued necessarily has that effect, because it takes away the power of the company to supply the village, the latter having placed itself beyond the necessity of being thus supplied; and the village having also undertaken the business of supplying its inhabitants, the power of the company to supply them is at least impaired, and, hence, it is urged that the obligation of its contract is impaired within the meaning of the Federal Constitution.

All franchises come from the State, although the legislature may, and often does, delegate to municipal authorities the right to take final action in the procedure resulting in the creation of a franchise. (Ghee *v.* Northern Union Gas Co., 158 N. Y. 510, 513.) The effect of such action, if within the legislative permission, is to allow the grantee to carry on the business authorized by the franchise. All rights not expressly granted by it are, as we have seen, reserved. The rights thus reserved include in part the granting of a franchise to another corporation to carry on the same business in the same territory. The power to grant the additional franchise, as well as the first one, the municipality acquires from the legislature, which has the power to determine whether the rights reserved upon the grant of the first franchise shall be exercised by a private corporation or by the municipal corporation. It may well be that compe-

tition by the municipality more seriously affects the earning capacity of the private corporation than would the competition of another private corporation; but the test of legislative power in such case is not whether the agency selected to construct and operate competing water works is effective or otherwise, but whether the statute providing for the agency also contains provisions assisting it to impair or destroy the property of the private corporation by other means than competition.

We are thus brought to an examination of the statutes, and our first inquiry will be whether they merely threaten parties
223 in the plaintiff's situation with the consequences of local municipal competition, or constitute an invasion of their grants. The former, as we have seen, is permissible. But the latter may not be done; for the doctrine has been settled since the Dartmouth College case (4 Wheat. 518), that a grant of corporate powers by the sovereign to an association of individuals for public use, constitutes a contract within the meaning of the Federal Constitution prohibiting a State legislature from passing laws impairing its obligations. In the recent case of Pearsall *v.* Great Northern R'y Co., (161 U. S. 646), the court, after a brief review of the Dartmouth College case, said: "Subsequent cases have settled the law that wherever charter rights have been acquired by virtue of the corporate charter, such rights, so far as they are necessary to the full and complete enjoyment of the main object of the grant, are contracts, and beyond the reach of destructive legislation." Intermediate the cases cited there are many cases in the Supreme Court of the United States in which the doctrine referred to has been either asserted or made the basis for the decision, as in N. O. Gas Co. *v.* Louisiana Light Co. (115 U. S. 650); N. O. Water Works Co. *v.* Rivers (115 U. S. 674); Louisville Gas Co. *v.* Citizens' Gas Co. (115 U. S. 683). These were cases where the grants were of an exclusive right to supply gas or water to a municipality. That court has taken frequent occasion to assert the inviolability of corporate charters in cases respecting the power of taxation, and in a series of decisions extending over many years has held that a clause in the contract imposing certain taxes in lieu of other taxes, or all taxes to which the stockholders would be subject, is impaired by legislation raising the rate of taxation or imposing taxes other than those specified in the charter. (N. J. *v.* Wilson, 7 Cranch, 164; State Bank of Ohio *v.* Knoop, 16 How. (U. S.) 369; Dodge *v.* Woolsey, 18 How. (U. S.) 331; McGee
224 *v.* Mathis, 4 Wall. 143; Farrington *v.* Tenn., 95 U. S., 679; Asylum *v.* New Orleans, 105 U. S., 362.)

In People *v.* O'Brien (111 N. Y. 1), the court at page 51 said, "An express reservation by the legislature of power to take away or destroy property lawfully acquired or created would necessarily violate the fundamental law, and it is equally clear that any legislation which authorizes such a result to be accomplished indirectly, would be equally ineffectual and void." That this contract is protected by the Constitution from destruction or impairment by legislation intended to accomplish that result either directly or indirectly is established by the authorities to which reference has been made.

Whether the plaintiff's contract is impaired by the legislature under which the defendant has established its water works, will now be considered.

We have already said that such legislation was not in excess of the power of the legislature in so far as it granted to the villages of the State the right to construct and operate water works, notwithstanding the existence in such villages of a private corporation engaged in the same business, which obtained its franchise under the act of 1873. But the appellant contends that chapter 181 of the Laws of 1875 and the acts amendatory thereof and supplemental thereto, under which the defendant has proceeded to construct water works of its own, authorizes the village, as its competitor, to tax the plaintiff company in the event that the net water receipts are not sufficient to pay interest and principal as they become due. Thus it may be compelled to contribute towards the cost of the construction and maintenance of the water works of its competitor, and, in addition a system of water taxes is devised by which tax-payers who are customers of the plaintiff corporation may be discriminated against and thus compelled through self-interest to cease taking water from the plaintiff and take that of the defendant instead. Section 16 of
225 the act provides: "In case the entire annual receipts for water rents, after deducing as in the preceding section provided, shall, in any year, not be sufficient to pay the interest for that year on said loans, or in case in any year when any of the principal of the loan secured by said bonds falls due, the amount of said receipts for water rents, after making said deduction, together with the sum in the said sinking fund, shall not be sufficient to pay said principal, * * *" shall "cause such deficiency to be assessed, levied and collected from the taxable property of said village. * * *" By chapter 507 of the Laws of 1889 authority was conferred upon the boards of water commissioners, acting under chapter 181 of the Laws of 1875, to establish a scale of water rates for the use of water, also rates to be assessed upon all real property abutting on the streets where the water pipes are laid. This section was amended by chapter 662 of the Laws of 1893, so as to authorize boards of water commissioners to "establish a scale of rates for the use of water and also rates for fire protection to be assessed on all real property abutting on the mains or within two hundred feet of the hydrants, the owners or occupants of which do not use the water for domestic or manufacturing purposes." By chap. 284 of the Laws of 1894 it was further amended, so as to read as follows: "Boards of water commissioners * * * may establish a scale of rates for the use of water and also rates for fire protection, to be assessed on all real property abutting on the mains or within two hundred feet of the hydrants, or on such real property so abutting, or within such distance, as such boards may deem beneficial, upon which real property the water is not used by the owners or occupants thereof for domestic or manufacturing purposes."

It is difficult to conceive of a more ingenious and effective device to deprive the plaintiff of its customers than the provision of the

statute which we have just quoted. The development of the
226 law upon that subject is interesting, but we shall not stop to discuss it, as the provisions we have quoted seem to make their own comment.

The provision of the act of 1894 had become incorporated into the act of 1875, before this defendant organized and proceeded in the construction of its works under the latter act. By it we perceive the water commissioners are authorized to "establish a scale of rates for the use of water, and also rates for fire protection, to be assessed upon all real property abutting on the mains or within two hundred feet of the hydrants," or the commissioners may ignore such limitations altogether and create others, which may, if they so determine, coincide with the corporate limits, and further they may confine the assessment to real property upon which the water is not used by the owners or occupants thereof for domestic or manufacturing purposes; for the statute provides as an alternative or a substitute for an assessment on all real property abutting on the mains or within two hundred feet of the hydrants, than an assessment may be made "on such real property so abutting or within such distance as such boards may deem beneficial, upon which real property the water is not used by the owners or occupants thereof for domestic or manufacturing purposes." Who can doubt that a board of water commissioners that would refuse to take such a plant as the plaintiff's by proceedings *in invitum*, and thereby necessarily at its fair valuation, would not hesitate to make use of the discretion so broadly conferred, in order to secure all of the patrons of the private company, or that they would find it at all difficult to determine that it would be "beneficial" to assess a large part of the cost of fire protection upon the inhabitants who had opposed their plan as destructive of property and wasteful, and had continued to take water from the private corporation as a matter of principle? And, again, who can
227 doubt that the villagers would expect to be discriminated against should they refuse the request of canvassers to become customers of the board of water commissioners? An attempt to exercise the authority sought to be conferred by this provision of the statute would necessarily deprive a private corporation of all its customers, and, as a result, the business of such corporation would be absolutely destroyed, a business which the law assured it at the time of its incorporation should not be interfered with otherwise than by competition.

If the provisions of the statute authorizing the taxation of the plaintiff for the payment of the obligations incurred in the construction of the defendant's water works, and the provision authorizing a discriminating tax against its patrons are so connected with the purpose of the act and the object in view that it cannot be said that they do not constitute an essential part of the scheme of the act, then it should be held to be in contravention of section 10 of the Federal Constitution and void. It is, however, a well-settled principle of construction that where the void provisions are separable from those that are lawful, and those that remain are capable of being executed, the valid provisions will not be condemned, because

of the unconstitutionality of other provisions not absolutely essential to the main purpose of the act. (Matter of N. Y. & L. I. Bridge Co., 148 N. Y. 540, 554, and cases cited.) It is obvious that the offending provisions do not constitute essential feature- of the act of 1875, as amended.

Indeed, the discriminating feature of the act of 1894 did not become incorporated into the original act until nearly nineteen years after its passage, and the elimination of that feature of the statute will in nowise interfere with the just and proper working out of the general purposes of the act, which is to enable municipalities to provide for an independent system of water works, to be owned and controlled by the municipal authorities. Neither is it an
228 essential part of the scheme that the plaintiff's property should be taxed to pay for the construction and maintenance of the defendant's water works. Abundant resources are provided for the working out of the plan for paying for the property and the cost of its operation, without assessing the property of the plaintiff for such purposes, but we are of the opinion that in view of the public interests involved (for many municipalities have constructed independent water works under this statute) the rule should be invoked which authorizes the elimination of the provisions of a statute which, if allowed to remain, would condemn it, where it can be done without interference with the general plan and scope of the act.

The judgment should be affirmed, with costs.

229 BARTLETT, *J.* (dissenting):

In this action the plaintiff sues in its own right, and not as a taxpayer of the village.

The legal questions involved are of great general importance and affect a very large amount of invested capital.

The argument, as set forth in the able briefs of counsel on both sides, has taken a wide range, but in my opinion there is one controlling question that is decisive of this case.

In order to state this question intelligently, a reference to the legal situation is important.

In 1873, the legislature enacted the general law for the formation of water companies. (Laws 1873, chap. 737.) That act has been amended from time to time (particularly Laws 1885 chap. 422).

The policy of this legislation has a most important bearing on the question under consideration. While the statute of 1873 is in form a general law authorizing the formation of water companies, it contains a limitation that permits the organization of a corporation thereunder only when the local authorities of the village interested have given their consent.

In 1875 (chap. 181), the legislature passed a law authorizing the villages of the State to furnish the municipalities and their inhabitants with pure and wholesome water.

This statute provides, in detail, how a village may organize and conduct a corporation and water system of its own.

It further provides (§ 22) that if it shall become or be deemed necessary by the board of water commissioners, they may institute condemnation proceedings to acquire the rights, privileges, grants and properties of an existing corporation.

This is optional with the village authorities only, and the existing company has no power to compel the water commissioners to purchase or condemn its rights and property.

In 1887 the trustees of the village of Skaneateles, as authorized by the act of 1873, as amended, granted to the plaintiff company the consent or franchise to perfect its organization
230 and supply the village and its inhabitants with water.

In 1889 the works were completed and the plaintiff entered upon the performance of its corporate duties.

In 1896 proceedings were instituted which resulted in the village of Skaneateles availing itself of the provisions of the act of 1875 (chap. 181), and it is now conducting a corporation and water system of its own.

The municipal company failed to avail itself of the right to acquire the property of the old company under condemnation proceedings. In this case, as in many others, the old company has ceased to pay expenses, and it is only a question of time when its bonds and stock will be worthless. Before considering the legal position of the village under the state of facts disclosed by this record, it may be well to inquire as to the legitimate risks assumed by the incorporators of the plaintiff at the outset.

I am of the opinion that the plaintiff did not acquire an exclusive right, under the act of 1873, to supply water to the village of Skaneateles, and its inhabitants. (Matter of City of Brooklyn, 143 N. Y., 596.) I think the plaintiff took the risk of the village authorities, at any future time, granting permission to private parties to form another water company and allowing it to furnish water to the municipality for public use as well as to the inhabitants.

If there is no exclusive right in the plaintiff, and if the village is free to permit the formation of as many corporations by private parties as they may deem proper, we have a situation where the freest competition is permitted and no monopoly exists.

All who embark in business ventures are bound to consider in advance that their investment of capital is subject to the peril of close and oftentimes successful competition. The vice of monopoly is that it escapes competition to the detriment of the con-
231 sumer.

We come then to the controlling question in this case. Is it competent for the legislature to authorize a village to organize a water company of its own to furnish water for private and public use when its trustees have previously granted a consent, or franchise, for a private corporation to do the same thing, without requiring the village, either by purchase, or condemnation proceedings, to acquire the rights and property of the old company?

I am of the opinion that the legislature has no such power, and the act of 1875 is, in that respect, unconstitutional, as depriving the

plaintiff of property without just compensation or due process of law and denying to it the equal protection of the laws.

It seems very clear that a municipal corporation, standing in the position of the village of Skaneateles, in this record, cannot engage in the business of furnishing water to itself and its inhabitants and drive the corporation that was organized by its consent to do the same business, into bankruptcy.

If this was accomplished by fair and legal competition that would be the end of the matter, as no valid objection could be made. The foundation of the argument to the contrary is that the municipality does not stand on an equal footing with the old company and invite it to fair and open competition.

In the first place it controls its own patronage as to furnishing water for public use, which is a considerable source of revenue to the existing company.

The latter, if competing with a new private company in this regard, would have an equal opportunity of obtaining the contract from the village as it would go to the lowest bidder, but not so where the latter organizes a company.

Again, the village has the power to impose a tax upon the
232 property of the existing company as a tax-payer to raise a fund to build the plant of the municipal corporation, and to make good from time to time any deficit in the conduct of its business.

Furthermore, the village has the power to establish a scale of rates for the use of water, and also rates for fire protection to be assessed on all real property abutting on the mains or within two hundred feet of the hydrants, the owners and occupants of which do not use the water for domestic or manufacturing purposes. (Laws 1889, chap. 507, as amended by Laws 1893, chap. 662.) Any patrons the old company retains will be driven at once into the municipal company by this tax. This assessment of rates for fire protection was properly designed to compel the non-consumer to contribute for benefits and protection enjoyed, but it will incidentally require the patrons of the old company to associate themselves with its municipal successor.

In view of the facts stated, it is obvious that the municipal water company is in no legal sense the ordinary competitor of the old company, but is armed with powers that will inevitably drive the latter from the field, and its bondholders and stockholders be subjected to a total loss of all capital invested. This is not competition,—it is annihilation.

As before stated, this litigation affects a very large amount of invested capital, aside from the case at bar, and the question is whether a court of equity is powerless to prevent the utter destruction of this property, or can it invoke legal principles which will do justice between the parties.

It seems to me that there is but one course to be pursued; the property of the old company should be purchased by private contract or condemned under the statute before the municipal water company is permitted to begin work on its plant.

When the town of New Lots was annexed to the city of
233 Brooklyn, the latter was prohibited from supplying water to the territory included in the town until the expiration of the charter of the water company, or until the city should purchase or acquire its property. (Laws of 1886, chap. 335, § 4.) The course suggested is the only one that can even approximate justice in the situation now presented. The old company, with a large bonded indebtedness that has been increased by reason of losses incurred during the early years of the venture, is sure to suffer financially even after a fair and honest condemnation proceeding.

In the case before us the old company first undertook the task of supplying a country village with water and encountered the usual experience of the few taking it and the many refusing it. The general, popular appreciation of the fact that a water company offers for a comparatively small sum of money an abundant supply of pure and wholesome water for domestic and sanitary purposes, is a matter of slow growth in a small country village, and the capitalists who embark in the enterprise suffer losses at the outset.

It is simple and obvious justice that the municipal corporation, before availing itself of the work and losses of the pioneer company, should acquire its property by purchase or condemnation proceedings. To hold that one of the powers the legislature has placed in the hands of the village, by which the plaintiff has been partially destroyed, is unconstitutional, avails nothing when others equally potent are allowed to stand to the utter destruction of the old company.

There is nothing in precedent, as I read the cases, to prevent a court of equity from granting relief in that large class of cases, of which this is one.

I vote for reversal.

All concur with Parker, Ch. J., for affirmance, except Bartlett, J., who reads dissenting opinion, and Haight, J., not voting.

Judgment affirmed.

234 Court of Appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 5th day of December, in the year of our Lord one thousand nine hundred and nine, before the judges of said court.

Witness, the Hon. Alton B. Parker, chief judge, presiding.

W. H. SHANKLAND, *Clerk.*

Remittur December 6th, 1899.

235 THE SKANEATELES WATER WORKS COMPANY, Appellant, *ag'st* THE VILLAGE OF SKANEATELES and Others, Respondents.

Be it remembered, that on the 10th day of January, in the year of our Lord one thousand eight hundred and ninety-nine, The

Skaneateles Water Works Company, the appellant in this action, came here into the court of appeals, by George Barrow, its attorney, and filed in the said court a notice of appeal and return thereto from the judgment of the appellate division of the supreme court in and for the fourth judicial department.

And The Village of Skaneateles and others, the respondents, in said action, afterwards appeared in said court of appeals, by M. H. Dillon, their attorney, which said notice of appeal and the return thereto filed as aforesaid, are hereunto annexed.

236 Whereupon, the said court of appeals, this cause having been submitted by counsel for the respective parties and after due deliberation had thereon, did order and adjudge that the judgment of the appellate division of the supreme court appealed from in this action, be in all things affirmed. And it was further ordered and adjudged that the respondents recover against the appellant with costs of appeal to this court.

And it was also further ordered that the record aforesaid and the proceedings in this court be remitted to the said supreme court, there to be proceeded upon according to law.

237 Therefore it is considered that the said judgment be in all things affirmed with costs as aforesaid, and stand in full force, strength and effect.

And hereupon as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises, are by the said court of appeals, remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such cases, made and provided to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, etc.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

Court of appeals, clerk's office.

ALBANY, *December 6th*, 1899.

[L. S.] I, hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein, attached thereto.

W. H. SHANKLAND, *Clerk.*

(Endorsed:) Filed Dec. 14, 1899, 2.05 p. m.

STATE OF NEW YORK, }
Onondaga County Clerk's Office, } ss:

I, George J. Yaeckel, clerk of said county, and of the supreme and county courts therein, which are courts of record, do hereby certify that I have compared the foregoing copy of a remittitur from court of appeals, with the original thereof on file and now remaining in this office, and that the same is — correct transcript of

Seal Onondaga County.

said original, and of the whole thereof, and of the endorsements thereon.

In witness whereof, I have hereunto set my hand and affixed the seal of said county and courts, at the city of Syracuse, this 25 day of July, 1900.

{ Ten cent United States internal-revenue stamp, canceled Jul- 25, 1900. G. J. Y. }

GEO. J. YAECKEL, *Clerk.*

238 At a special term of the supreme court held in and for the county of Onondaga at the court-house in the city of Syracuse, N. Y., on the 9th day of December, 1899.

Present: Hon. Frank H. Hiscock, J. S. C.

THE SKANEATELES WATER WORKS CO., Appellant,
against
THE VILLAGE OF SKANEATELES, E. NORMON LESLIE, as President of said Village; John Connell, Edwin Whiting, Edward Dent, as Trustees of said Village, and Lemuel D. Hall, Edward Eckett, James A. Root, and John L. Shultz, as Water Commissioners of the Village of Skaneateles, Respondents.

The above-named plaintiff having appealed to the court of appeals from the judgment of the appellate division, fourth department, of this court, entered in this action on the 18th day of October, 1898, affirming the judgment entered therein on the 17th day of July, 1897, in the office of the clerk of the county of Onondaga, and the court of appeals having heard said appeal, and ordered and adjudged that the judgment so appealed from be affirmed, and judgment entered for defendants with costs, and the record remitted from that court having been filed, and an order having been entered thereon, making the judgment of the court of appeals the judgment of this court and directing the entry of judgment of affirmance herein with costs of said appeal against the defendant- to be taxed.

Now on motion of M. F. Dillon, attorney for the defendant it is

Adjudged: that the judgment in this action entered on the 18th day of October, 1898, be and the same is hereby affirmed.

And it is further adjudged that the defendants recover of
239 the plaintiff the sum of one hundred forty-six & $\frac{13}{100}$ dollars their costs herein as taxed and that they have execution against said plaintiffs therefor.

GEO. J. YAECKEL, *Clerk.*

(Endorsed:) Filed Dec. 14, 1899, 2.05 p. m.

STATE OF NEW YORK, *Onondaga County Clerk's Office,* } ss:

I, George J. Yaeckel, clerk of said county, and of the supreme and county courts therein, which are courts of record, do hereby certify

that I have compared the foregoing copy of a judgment of Sp. Ct. on remittitur with the original thereof on file and now remaining in this office, and that the same is a correct transcript of said original, and of the whole thereof, and of the endorsements thereon.

Seal Onondaga County.

In witness whereof, I have hereunto set my hand and affixed the seal of said county and courts, at the city of Syracuse, this 25 day of July, 1900.

GEO. J. YAECKEL, *Clerk.*

{ Ten-cent United States internal-revenue stamp, canceled Jul- 25, 1900. G. J. Y. }

240 To the Honorable Alton B. Parker, chief judge of the court of appeals of the State of New York:

And now comes the Skaneateles Water Works Company, by George Barrow, its attorney, and complains that in the record and proceedings, and also in the rendition of a judgment — a plea in a suit between the said Skaneateles Water Works Company, plaintiff, and The Village of Skaneateles, E. Norman Leslie as president of said village; John Connell, Edward Whiting, Edward Dent, as trustees of said village; and Lemuel D. Hall, Edward Eckett, James A. Root and John L. Shultz, as water commissioners of the village of Skaneateles, defendants, which is in the court of appeals of the State of New York, being the highest court of law and equity of the said State in which a decision could be had, the said court of appeals having rendered a decision affirming the said judgment theretofore rendered in the supreme court of the State of New York on the 7th day of October 1898, affirming the judgment of the special term of the said supreme court rendered on the 17th day of July, 1897, against the plaintiff and in favor of the defendants, for the sum of eighty-one dollars and ten cents costs, and dismissing the plaintiff's complaint, which judgment and decision of the said court of appeals was remitted to the said supreme court, county of Onondaga, and such judgment of the court of appeals made the judgment of the said supreme court, and entered in the clerk's office of the said county of Onondaga on the 14th day of December, 1899, and for the sum of one hundred forty-six dollars and fifteen cents ($146.15), wherein was drawn in question the validity of a statute of

241 said State of New York and of an authority exercised thereunder, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision was in favor of such their validity, all of which appear in the records and proceedings in said suit, manifest error hath happened, to the great damage of the said The Skaneateles Water Works Company, plaintiff.

Wherefore, the said The Skaneateles Water Works Company, by its attorney aforesaid, prays for the allowance of a writ of error and such other process as may cause the said error to be corrected by the Supreme Court of the United States.

GEORGE BARROW,
Attorney for the Skaneateles Water Works Company, Plaintiff.

(Endorsed:) Read on application for writ of error. Alton B. Parker, chief judge court of appeals State of New York. Filed June 29, 1900.

STATE OF NEW YORK, } ss:
Onondaga County Clerk's Office, }

I, George J. Yaeckel, clerk of said county, and of the supreme and county courts therein, which are courts of record, do hereby certify that I have compared the foregoing copy of a petition with the original thereof on file and now remaining in this office, and that the same is a correct transcript of said original, and of the whole thereof, and of the endorsements thereon.

Seal Onondaga County.

In witness whereof, I have hereunto set my hand and affixed the seal of said county and courts, at the city of Syracuse, this 20 day of July 1900.

GEO. J. YAECKEL, *Clerk.*

[Ten-cent United States internal-revenue stamp, canceled.]

242 [Endorsed:] Court of appeals. The Skaneateles Water Works Company, plaintiff in error *vs.* The Village of Skaneateles *et al.* defendants in error. (Ex.) Petition for writ of error. George Barrow, attorney for plaintiff in error, office and post-office address, Skaneateles, N. Y.

243 Court of Appeals of New York.

THE SKANEATELES WATER WORKS COMPANY, Plaintiff,
against
THE VILLAGE OF SKANEATELES, E. NORMAN LESLIE, as President of said Village; John Connell, Edwin Whiting, Edward Dent, as Trustees of said Village, and Lemuel D. Hall, Edward Eckett, James A. Root, and John L. Shultz, as Water Commissioners of the Village of Skaneateles, Defendants.

In this cause application having been made to the Honorable Alton B. Parker, chief judge of the court of appeals of the State of New York, that being the highest court of record in this State in which said cause can be heard, for an allowance of a writ of error to remove said cause to the Supreme Court of the United States for review, in accordance with the Constitution and laws of the United States and the rules and practice of the Supreme Court of the United States, and for the fixing and approving of the bond on the removal of said cause to the Supreme Court of the United States, it is hereby ordered that said writ of error be, and the same is hereby, allowed, and the same may be issued by any officer authorized to issue the same, and the penalty in the bond is hereby fixed at the sum of one thousand dollars, with the Lawyers' Surety Company of New York City as surety thereon.

ALTON B. PARKER,
Chief Judge of the Court of Appeals of the State of New York.

(Endorsed:) Entered June 29, 1900.

STATE OF NEW YORK, }
Onondaga County Clerk's Office, } ss:

I, George J. Yaeckel, clerk of said county, and of the supreme and county courts therein, which are courts of record, do hereby certify that I have compared the foregoing copy of an order with the original thereof entered and now remaining in this office, and that the same is a correct transcript of said original, and of the whole thereof, and of the endorsements thereon.

Seal Onondaga County.

In witness whereof, I have hereunto set my hand and affixed the seal of said county and courts, at the city of Syracuse, this 20 day of July, 1900.

GEO. J. YAECKEL, *Clerk*.

[Ten cent United States internal-revenue stamp, canceled.]

244 [Endorsed:] Court of appeals. The Skaneateles Water Works Company, plaintiff in error, *vs.* The Village of Skaneateles *et al.*, defendants in error. (Ex.) Order allowing writ of error. George Barrow, attorney for plaintiff in error, office and post-office address, Skaneateles, N. Y.

245 In the Court of Appeals of the State of New York.

THE SKANEATELES WATER WORKS COMPANY, Plaintiff,
against
THE VILLAGE OF SKANEATELES, E. NORMAN LESLIE, as President of said Village; John Connell, Edwin Whiting, Edward Dent, as Trustees of said Village, and Lemuel D. Hall, Edward Eckett, James A. Root, and John L. Shultz, as Water Commissioners of the Village of Skaneateles, Defendants.

The plaintiff above named, The Skaneateles Water Works Company, assigns the following errors in the final decision of this court duly filed herein on the 5th day of December, 1899.

I. The court erred in holding and deciding that the plaintiff was not entitled to the remedy and relief asked for and sought in its complaint and in affirming the judgment of the supreme court denying to the plaintiff the relief demanded in its complaint, and dismissing the plaintiff's complaint with costs.

II. The court erred in not ordering and adjudging that the judgment of the supreme court dismissing the complaint be reversed and that the relief demanded by such complaint be granted, and the defendants restrained by injunction from the performance of the acts complained of.

III. The court erred in denying to the plaintiff the rights claimed by it in its complaint under section 10 of article I of the
246 Constitution of the United States, and in denying to the plaintiff any relief on that ground.

IV. The court erred in not holding and adjudging that the acts of the defendants sought to be restrained were contrary to the pro-

visions of section 10 of article I of the Constitution of the United States, securing to the plaintiff the validity of its contracts made with the defendants under the laws of the State of New York.

V. The court erred in denying to the plaintiff the rights claimed by it under section 1, of the fourteenth amendment to the Constitution of the United States, and denying to the plaintiff any relief on that ground.

VI. The court erred in not holding and adjudging that the acts of the defendants sought to be restrained were contrary to the provision of said fourteenth amendment to the Constitution of the United States, securing to the plaintiff the equal protection of the laws, and denying to the State of New York the right to deprive plaintiff of its property under any statute of its legislature without due process of law.

VII. The court erred in not holding and adjudging that the acts of defendants sought to be restrained were contrary to the provisions of article V, of the amendments to the Constitution of the United States, providing that no person shall be deprived of his property without due process of law, and that private property shall not be taken for a public use without just compensation.

VIII. The court erred in deciding in favor of the validity of the statutes of the State of New York and the authority exercised under said statutes by the defendants pursuant to which the
247 acts complained of were performed by the defendants notwithstanding the fact that their validity was drawn in question on the ground of their being repugnant to the Constitution of the United States.

Wherefore plaintiff herein prays for a reversal of the judgment entered herein.

GEORGE BARROW,
Attorney for Plaintiff in Error, Skaneateles, N. Y.

(Endorsed:) Filed June 29, 1900.

STATE OF NEW YORK, }
Onondaga County Clerk's Office, } *ss:*

Seal Onondaga County.

I, George J. Yaeckel, clerk of said county, and of the supreme and county courts therein, which are courts of record, do hereby certify that I have compared the foregoing copy of an assignment of error with the original thereof on file and now remaining in this office, and that the same is a correct transcript of said original, and of the whole thereof, and of the endorsements thereon.

In witness whereof, I have hereunto set my hand and affixed the seal of said county and courts, at the city of Syracuse, this 20 day of July, 1900.

GEO. J. YAECKEL, *Clerk.*

[Ten-cent United States internal-revenue stamp, canceled.]

248 [Endorsed:] Court of appeals. The Skaneateles Water Works Company, plaintiff in error, *vs.* The Village of Skaneateles *et al.*, defendants in error. Assignment of errors. George Barrow, attorney for plaintiff in error, office and post-office address, Skaneateles, N. Y.

249 Know all men by these presents, that we, The Skaneateles Water Works Company, as principal, and The Lawyers' Surety Company of New York City, as surety, are held and firmly bound unto the Village of Skaneateles, E. Norman Leslie, as president of said village, John Connell, Edwin Whiting, Edward Dent, as trustees of said village, and Lemuel D. Hall, Edward Eckett, James A. Root and John L. Shultz, as water commissioners of said village, in the full and just sum of one thousand dollars, to be paid to the said The Village of Skaneateles, E. Norman Leslie, as president of said village, John Connell, Edwin Whiting, Edward Dent, as trustees of said village, and Lemuel D. Hall, Edward Eckett, James A. Root and John L. Shultz, as water commissioners of said village, their certain attorney, successors, or assigns: to which payment, well and truly to be made, we bind ourselves, our successors or assigns, jointly and severally, by these presents.

(5-cent rev. stamp canceled.)

Sealed with our seals and dated this 28th day of June in the year of our Lord nineteen hundred.

Whereas, lately at a session of the court of appeals of New York in a suit depending in said court, between The Skaneateles Water Works Company, plaintiff, and The Village of Skaneateles, E. Norman Leslie, as president of said village, John Connell, Edwin Whiting, Edward Dent, as trustees of said village, and Lemuel D. Hall, Edward Eckett, James A. Root and John L. Shultz, as water commissioners of said village, defendants, a decision was rendered against the said plaintiff affirming the judgment of the supreme court of the State of New York, dismissing the plaintiff's complaint and the said plaintiff, The Skaneateles Water Works Company, having obtained a writ of error and filed a copy thereof in the clerk's office of Onondaga county, New York, to reverse the decision and judgment
250 in the aforesaid suit, and a citation directed to the said The Village of Skaneateles, E. Norman Leslie, as president of said village, John Connell, Edwin Whiting, Edward Dent, as trustees of said village, and Lemuel D. Hall, Edward Eckett, James A. Root and John L. Shultz, as water commissioners of said village, having been duly issued citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said The Skaneateles Water Works Company shall prosecute its said writ of error to effect, and answer all damages and costs if it fail to

make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

SKANEATELES WATER WORKS CO.,
By J. W. HAWLEY, *President.*

[Seal of Water Co.]

THE LAWYERS' SURETY COMPANY OF NEW YORK,
By THOMAS HUNT, 2*d Vice-Pres't.*

Sealed and delivered in presence of—
LYDIA G. ALLEN,
E. H. HALL,
As to Water Co.
H. G. HUNTON,
As to L. S. Co.

[Seal of Surety Co.]

Attest: LOUIS E. KUSTER,
Acting Secretary.

251 STATE OF NEW YORK, } ss:
County of New York, }

On the 28 day of June, in the year 1900, before me personally came Thomas Hunt to me known who, being by me duly sworn, did depose and say, that he resided in the city of New York; that he is the 2d vice-president of the Lawyers' Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the seal of the said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3, chapter 720, of the New York Session Laws of 1893.

H. G. HINTON,
Notary Public, Kings County, N. Y.

Certificate filed in N. Y. Co.

At a stated meeting of the board of directors of the Lawyers' Surety Company of New York, held at the office of the company, Nos. 32, 34 and 36 Liberty street, in said city, on the 21st day of April, 1897, on motion, it was unanimously—

"Resolved, That the president, the vice-president, the acting president or the second vice-president be, and either of them is, hereby authorized and empowered to sign, execute and deliver any and all bonds or undertakings for or on behalf of the company, and to attach thereto the seal of the corporation, the same to be attested by the secretary or the acting secretary."

252 COUNTY OF NEW YORK, *ss:*

I, Joel Rathbone, secretary of the Lawyers' Surety Company of New York, have compared the foregoing resolution with the original thereof as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom and the whole of said original resolution.

Given under my hand and seal of the company at the city of New York, this 28th day of June, 1900.

[Seal of Company.]

LOUIS E. KUSTER,
Acting Secretary.

This bond is approved as to form, amount and sufficiency of surety.

July 9th, 1900.

ALTON B. PARKER,
Ch. J., Court of Appeals, New York.

(Endorsed:) Filed July 13, 1900.

STATE OF NEW YORK, }
Onondaga County Clerk's Office, } *ss:*

I, George J. Yaeckel, clerk of said county, and of the supreme and county courts therein, which are courts of record, do hereby certify that I have compared the foregoing copy of a bond with the original thereof on file and now remaining of record in this office, and that the same is a correct transcript of said original, and of the whole thereof, and of the endorsements thereon.

Onondaga County Seal.

In witness whereof, I have hereunto set my hand and affixed the seal of said county and courts, at the city of Syracuse, this 20 day of July, 1900.

GEO. J. YAECKEL, *Clerk.*

[Ten-cent United States internal-revenue stamp, canceled.]

253 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of New York before you, or some of you, upon the decision and judgment of the court of appeals of the State of New York, being the highest court of law or equity of the said State in which a decision could be had, which decision and judgment was thereafter duly remitted to and made the judgment of the said supreme court and entered in the clerk's office of Onondaga county, New York, on the 14th day of December 1899, in the suit between The Skaneateles Water Works Company, plaintiff, and The Village of Skaneateles, E. Norman Leslie, as pres-

ident of said village; John Connell, Edward Whiting, Edward Dent, as trustees of said village; and Lemuel D. Hall, Edward Eckett, James A. Root and John L. Shultz, as water commissioners of the village of Skaneateles, defendants, wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity:—a manifest error hath happened to the great damage of the said The Skaneateles Water Works Company as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly,
254 you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States of America at the city of Utica in the northern district of New York, the 22d day of June, in the year of our Lord nineteen hundred, and of our Independence the one hundred and twenty-fourth.

[Seal of the U. S. Circuit Court, Northern District N. Y.]

W. S. DOOLITTLE,
Clerk of the United States Circuit Court,
Northern District of New York,
By C. W. HIGGISON, *Deputy.*

Allowed by—
ALTON B. PARKER,
Chief Judge of the Court of Appeals of New York.

255 [Endorsed:] Court of appeals. The Skaneateles Water Works Company plaintiff in error *vs.* The Village of Skaneateles *et al.* defendants in error. Writ of error. George Barrow, attorney for plaintiff in error, office and post-office address, Skaneateles, N. Y. Entered June 29 1900.

256 UNITED STATES OF AMERICA, *ss:*

To the Village of Skaneateles, E. Norman Leslie, as president of said village; John Connell, Edwin Whiting, Edward Dent, as trustees of said village, and Lemuel D. Hall, Edward Eckett, James A. Root, and John L. Shultz, as water commissioners of the village of Skaneateles, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within 30 days

from the date hereof, pursuant to a writ of error, filed in the office of the clerk of the county of Onondaga at Syracuse, N. Y., being the office of the clerk of the supreme court of the State of New York, in a suit wherein The Skaneateles Water Works Company was plaintiff in error, and you are defendants in error, to show cause, if any there be why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Alton B. Parker, chief judge of the court of appeals of the State of New York, this 22d day of June, in the year of our Lord nineteen hundred.

ALTON B. PARKER,
Chief Judge of the Court of Appeals of the State of New York.

257 Court of Appeals.

THE SKANEATELES WATER WORKS COMPANY, Plaintiff in Error,
vs.
THE VILLAGE OF SKANEATELES ET AL., Defendants in Error.

STATE OF NEW YORK, *County of Onondaga,* } *ss.:*

Edward C. Miller, being duly sworn, deposes and says that he resides at Skaneateles, N. Y., that he is of the age of twenty-one years and upwards; that on the 14th day of July, 1900, at Skaneateles in the county of Onondaga, State of New York, he served the annexed citation on M. F. Dillon, attorney for the defendant in error, by delivering to and leaving with said M. F. Dillon a true and correct copy thereof; that deponent knew said M. F. Dillon to be the person described in said citation as attorney for defendant in error in the above-entitled action.

EDWARD C. MILLER.

Subscribed and sworn to before me this 14th day of July, 1900.
[L. S.] J. HORATIO EARLL,
Notary Public.

(Endorsed:) Filed July 18, 1900.

STATE OF NEW YORK, *Onondaga County Clerk's Office,* } *ss.:*

I, George J. Yaeckel, clerk of said county, and of the supreme and county courts therein, which are courts of record, do hereby certify that I have compared the foregoing copy of an affidavit with the original thereof on file and now remaining in this office, and that the same is a correct transcript of said original, and of the whole thereof, and of the endorsements thereon.

Seal Onondaga County.

In witness whereof, I have hereunto set my hand and affixed the seal of said county and courts, at the city of Syracuse, this 20 day of July, 1900.

GEO. J. YAECKEL, *Clerk.*

[Ten-cent United States internal-revenue stamp, canceled.]

258 [Endorsed:] Court of appeals. The Skaneateles Water Works Company, plaintiff in error, *vs.* The Village of Skaneateles *et al.*, defendants in error. Citation. George Barrow, attorney for plaintiff in error, office and post-office address, Skaneateles, N. Y. Filed June 29, 1900.

Endorsed on cover: File No. 17,870. New York supreme court. Term No. 134. The Skaneateles Water Works Company, plaintiff in error, *vs.* The Village of Skaneateles, E. Norman Leslie, as president of said village, *et al.* Filed August 13th, 1900.